IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8116 of 2005
with
Special Civil Application Nos. 8117 of 2005 and 8118 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?Yes

2 To be referred to the Reporter or not ?Yes

3 Whether their Lordships wish to see the fair copy of the judgment ?No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No

5 Whether it is to be circulated to the civil judge ?No

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FEDERATION OF GUJARAT PETROLEUM DEALERS ASSOCIATION & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 11 - Respondent(s)

Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 3.
MR. A.D. OZA, G. P. with Mr.L.R. Poojari, AGP, for Respondent(s) : 1,2,4&5
NOTICE SERVED BY DS for Respondent(s) : 6,
MR JITENDRA MALKAN for Respondent(s) : 3
MR KS NANAVATI with MR.Chudgar for Respondent(s) : 7 - 10, 12,

MR GN SHAH for Respondent(s) : 11,
MS MINOO A SHAH for Respondent(s) : 11,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/02/2006

CAV JUDGMENT

1. Federation of Gujarat Petroleum Dealers Association, petitioner (in Petition No.8116/2005) has filed this petition under Article 226 of the Constitution of India with following prayers.

(i) that this Court may issue an appropriate writ, order or direction quashing and setting aside Circular dated 10.2.2003 (hereinafter referred to as “the said Circular”) issued by the Revenue Department, Government of Gujarat.

(ii) that this Court may quash and set aside the letter dated 17.12.2004 issued by the State of Gujarat to the Collector, Mehsana, clarifying the norms relating to encroachment by the existing retail outlets.

(iii) that this Court may issue direction against the respondent Government i.e. State of Gujarat, respondent No. 1, and respondent Nos. 7 - Reliance Industries Limited; respondent No. 8 - Essar Oil Limited; respondent No. 9 – Indian Oil Corporation Ltd.; respondent No. 10 - Bharat Petroleum Corporation Ltd.; respondent No. 11 – Hindustan Petroleum Co. Ltd.; and respondent No. 12 – IBP Company Ltd., for strictly enforcing the norms as laid down in guidelines issued by the Town Planning and Valuation Department of the Government of Gujarat dated 17.7.1980 by the Secretary, Revenue Department of Government of Gujarat so far as it relates to installation of petrol pumps.

(iv) that this Court may issue direction for strict enforcement of the norms as laid down in the letter dated 25.9.2003/17.10.2003 at Annexure-B and more particularly as set out in Appendix-I and other accompaniments to the said norms in the matter of construction and installation of retail outlets of national

highways.

(v) that this Court may be pleased to issue directions restraining the respondent Oil Companies from starting construction for installation of petrol/diesel pumps without obtaining prior permission from the National Highways Authorities or the Urban Development Authorities and Area Development Authorities established under Gujarat Town Planning and Urban Development Act and the Rules framed thereunder so far as it relates to the petrol/diesel pumps.

(vi) that this Court may issue orders directing respondent No. 1 – State of Gujarat, respondent No. 2 – the Secretary, Govt. of Gujarat, Road and Building Department and respondent No. 3 – Union of India through the Secretary, Ministry of Petroleum and Natural Gas, New Delhi to issue immediate orders to the Collectors and other appropriate authorities including the National Highway Authorities and

the State Highway Authorities for prohibiting construction and installation of retail outlets for petrol/diesel pumps and/or petrol pump-cum-service stations in respective Districts by the Collector.

(vii) that this Court may be pleased to issue direction or order directing the Urban Development Authority and /or Area Development Authority of the State of Gujarat to forthwith direct stoppage of construction and installation of retail outlet by the respondent Oil Companies by themselves or through their dealers without obtaining prior permission required under Law and the Government Resolutions issued by the Central Government as well as Circulars issued by the State Government referred to earlier.

(viii) During the pendency of the petition the petitioner has amended the petition and also added prayer 46(jj) and 46(jjj).

2. The aforesaid petition was filed on 25.4.2005.

It was placed before this Court (Coram: M.R. Shah, J) on 5.5.2005 when this Court issued notice returnable on 13.6.2005. The Court did not grant any interim relief on that day. Thereafter, the matter was placed for hearing before this Court from time to time.

3. On behalf of the petitioner Mr. Harin P. Raval, learned advocate, has appeared. He has argued the matter at great length and with remarkable ability. On behalf of the State Government Mr. A.D. Oza, learned Government Pleader with Mr.L.R.Poojari, learned AGP appears. Mr. Jitendra Malkan, Additional Solicitor General, appears for respondent No. 3 Union of India. Mr. K.S. Nanavati, learned sr. counsel with Mr. Chudgar, learned advocate, appears for respondent Nos. 7, 10 and 12. Mr. G.N. Shah, learned advocate with Ms. Minu Shah, appears for respondent No. 11 and other respondents have been served. With the consent of the parties the matters have been taken up for final disposal. Hence Rule. The learned counsel for the respective respondents waive service of rule.

4. The facts giving rise to these petitions are as under:

4.1 The petitioner is a Federation of Petrol/Diesel Dealers Association of the State of Gujarat. Dealers dealing in petrol/diesel are members of the petitioner Federation. Petitioner Nos. 1 and 2 are honorary Secretary and honorary Joint Secretary of petitioner No. 1. During the pendency of the petition, the petitioner has also moved a draft amendment and the same was allowed and the petition is accordingly amended.

4.2 Mr. Harin P. Raval, learned advocate for the petitioner has made the following submissions:

4.3 It is the case of the petitioner that the Planning and Valuation Department of Government of Gujarat has issued necessary guidelines. The said guidelines are issued by the Revenue Department of Government of Gujarat vide resolution dated 17.7.1980 regarding permission to be obtained

before construction of a Motor Fuel Filling Station. The State Government also issued relevant regulations for Motor Fuel Filling-cum-Service station. The Indian Roads Congress in its recommended practice for location and lay out of road side Motor Fuel Filling and Motor Fuel Filling-cum-Service Station has laid down the norms which are accepted by the Central Government as well as State Government. The said has been published in 1983.

4.4 The petitioner also referred to the guidelines published by the State of Gujarat in the Government Resolution dated 17.7.1980 (page 104) of the Revenue Department containing Rules and Conditions so as to provide for maintenance of the Urban Development Rules and prevent its breach thereof. The said Regulations contain the minimum distance to be maintained from the Centre of the road before starting construction in various kinds of land according to the location of the land being situated on National Highways, border highways, State Highways and the main District Roads, as well

as other Road and Rural Roads.

4.5 The petitioner has also produced letter of Government of India, Ministry of Road, Transport and Highways dated 25.9.2003/17.10.2003 (page 77-80) addressed by the Chief Engineer for Director General (Road Development) & Special Secretary to all Chief Secretaries/Secretaries (PWD Roads) of all State Governments/UTs dealing with National Highways and Centrally Sponsored Schemes by which the Government has accepted the norms issued by the Indian Roads Congress (for short “IRC”). The petitioner has relied on paragraphs 1 to 7 of the said letter.

4.6 After relying upon the letter dated 25.9.2003/17.10.2003 the petitioner has stated that a bare perusal of the said letter which is addressed to all the Chief Secretaries of the State Governments as well as to the Union Territories and other authorities named therein clearly go to show that the norms stipulated by the Indian Roads Congress are accepted for being strict enforcement

and scrupulous following by the Union Ministry. The norms referred to in the said letter dated 25-9-2003/17-10-2003 are in modifications of the earlier norms. The norms referred to in the said letter clearly reflect that the petrol/diesel retail outlets to come up in non-Urban Rural stretches, as well as in Urban stretches unless the minimum distance from an intersection as laid down in para 6.1.1 (i, ii and iii) which is of 1000 metres, 300 metres, and 100 metres is maintained). Similarly, for Urban stretches there is restriction for two fuel stations, which is of 300 metres and 100 metres is maintained) as laid down in para 6.1.2.1 (a) for Urban area with population of more than 20,000 and less than one lakh in para 6.1.2.(b) for Urban areas with population of one lakh and above 100 metres from intersection with any category of road (irrespective of carriageway width). Similarly, the said norms prescribed under para 6.2 minimum distance between two fuel stations along with National Highway to be 300 metres in case of undivided carriageway in plain and rolling terrain in non-Urban (Rural) Areas and 1000 metres of

divided carriageway (with no gap in median at this location and stretch) in case of plain and rolling terrian in non-Urban (Rural) areas.

4.7 The learned advocate further submitted that similarly the minimum plot size of a fuel station is also mentioned in para 6.4 of the said letter. Para 7 of the said letter provides that the norms would be applicable to all the new fuel stations from the date of issuance of the said circular. It is stated that the said documents provide that the norms are applicable to all fuel stations with or without other user facilities of rest areas, along with undivided carriageway and divided carriageway sections of National Highways in plain, rolling and hilly terrain and passing through urban stretches. It also provides for minimum plots size for fuel station. It also provides the list of documents to be submitted for getting approval for installation of new Fuel Station along National Highways.

4.8 On the basis of the aforesaid documents, the learned counsel for the petitioner submitted that

the norms stipulated by the Indian Roads Congress are accepted by the State of Gujarat. It was also submitted that these norms have to be scrupulously and strictly in force followed. It was submitted that unless prior appropriate permission from the concerned Collector, District Development Officer in consultation with the Executive Engineer concerned is not obtained then, the new installation of petrol pumps commissioning and construction cannot be permitted. It also lays down that for violation of requirement of taking permission strict action against the concerned officer would be taken. It is also stated that para 9 states that any permission as an exception to the provisions contained in para 9 or any provisions of the said Government Resolution can only be granted by the Government and that too with the prior consent of the Revenue Department, as well as, of the Road and Building Department. The procedure prescribed for obtaining permission in such exceptional cases is to require such proposals from the Collector and / or District Development Officer to be forwarded to the Government with

details as are set out in the said Resolution. It is also stated that the purpose for which the Urban Development Rules are framed are strictly enforced and directions are issued by the District Collectors and District Government Officer and other Officers to seek a very strictest enforcement.

4.9 It is submitted that similarly, in exercise of powers conferred under Section 17(i) (ii) (a) of the Gujarat Town Planning and Urban Development Act, 1976, after the publication of a draft development plan under Section 13, invitation of objections and suggestions under Section 14 are required. After it is submitted to the State Government for approval under Section 16 of the Gujarat Town Planning and Urban Development Act, 1976, and on the State Government having sanctioned the same in exercise of powers under Section 17(1) (a) to (2)(a), the Ahmedabad Urban Development Authority has framed the General Development Control Regulations which are published in the Government Notification dated 18.5.2002. The said

notification is modified by the corrigendum Notification dated 8.10.2002.

4.10 On the basis of the above, the petitioner has made the following submissions that these General Development Control Regulations are sanctioned by the State Government together with sanction of a draft development plan and therefore these are statutory provisions. That para 20 contains the provisions for gasoline filling-cum-service station.

4.11 The learned advocate stated that a bare perusal of these documents clearly show that all new installation and commissioning and constructions of fuel stations are required to be in consonance with the norms stipulated by the Indian Road Congress, the Urban Development Rules, as published by the Town Planning and Valuation Department of State of Gujarat and with respect to area fall in within the Urban Development Authority such as Ahmedabad Urban Development Authority, as per the General Development Control Regulations.

The above mentioned submissions are with respect to the first facet of the petitioner where the relief prayed for by the Federation is to seek enforcement of various norms, guidelines and rules in the matter of maintenance of distances, locations and let out of new petrol/diesel retail outlets and requirement of obtaining permission of National Highways Authorities, as well as other authorities as stipulated in the Circular.

Second Facet of the petitioner's argument:

4.12 It is submitted that the second facet of the petition is to challenge to the arbitrary, illegal and unlawful stand of the State Government as contained in the Resolution/Circular dated 10.2.2003 issued by the Revenue Department. The same is issued on misinterpretation of provisions of Section 48 as well as Section 65(A) and Section 65(B) of the Bombay Land Revenue Code. The State Government has issued a circular dated 10/2/2003 through the Revenue Department that by misinterpreting the various provisions of Bombay

Land Revenue Code. In view of this a deemed N.A. Permission is sought to be made applicable to all new retail petrol/diesel outlets on the ground that it falls within the scope and ambit of a bona fide industrial purpose. This is sought to be done by misinterpreting that petrol is petrochemical industry and storage of petro amount to storage of petrol chemicals. This Circular provides for an incorrect factual basis since petrol is not a petrochemical.

4.13 The learned advocate has stated that in the aforesaid Resolution the State Government has relied on the term “petrochemical” as well as “petroleum” which is defined in Hawley's Condensed Chemical Dictionary 2003, 13th Edition, page 855 as well as Law Dictionary and Concise Encyclopedia, 3rd Revision, 8th Edition, Vol. 3, page 2579 as well as Halsbury's Law of England, 4th Edition, Vol. 35 particularly para 1202 at page 662. The learned advocate has also relied on the Petroleum Act, 1934 and the Indian Explosives Act, 1884 in this behalf.

4.14 After relying on the definition of “petrochemical” and “petroleum”, the learned counsel has made the following submissions:

4.15 In view of the above, it is clear that petrol is final product and cannot be considered to be petrochemical. Therefore, by misinterpreting the fact that storage of petrol amount to storage of petrochemical benefit of deemed N.A. Permission while considering it as bona fide industrial use is extended by the Government of Gujarat. It is alleged that the said circular is issued to benefit the private Oil Companies viz., Essar Oil Company. Since, on behalf of the Government Oil Companies, a clear statement is made in the affidavit as well as at the bar that they are first applying for and getting N.A. Permission. Therefore, it is clear that the action of the Government is to benefit these two private entrepreneurs.

4.16 In support of his submissions, the learned advocate has relied of certain provisions of the Bombay Tenancy and Agricultural Lands Act and Bombay Land Revenue Code. Similarly, there is

restriction contained in Section 6 of the Bombay Tenancy and Agricultural Lands Act which prohibits transfer to non-agriculturist including being a sell in execution of decree for grant of decree of Civil Court or for recovery of arrears of land revenue. Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, as applicable to the State of Gujarat provides for restriction on the retransfer of land purchased or sold under the said Act. That tenure of lands is two types, viz., old tenure which is freely transferable, new and impartable tenure which is restricted tenure. That most of the land are new and impartable tenure granting thereto those lands cannot be sold, transferred or dealt with except in accordance with the manner prescribed under the provisions of law and that too after obtaining prior permission of converting the tenure from new and impartable tenure to old tenure, which can be done only after prior permission being granted and on payment of conversion charges for the change of tenure. The Government of Gujarat by issuing the Circular dated 10.2.2003 the provisions contained in the

Bombay Tenancy Act is clearly given go by. That this restriction is given on the title by virtue of the said circular dated 10.2.2003 and therefore the Circular is contrary to the statutory provisions as it interferes with and nullifies the fact of statutory provisions contained in Sections 43, 48 and 63 of the Bombay Tenancy and Agricultural Land Act.

4.17 The learned counsel submitted that Section 48 of the Bombay Land Revenue Code provides that there is a restriction for use of agricultural land for any other non-agricultural purpose and Section 61 of the Code prohibits any person from unauthorised occupation and user of the land in contravention of the permitted user.

4.18 That Section 65 of the Bombay Land Revenue Code (hereinafter referred to as “the Code”) provides the uses to which the occupant of a land for the purpose of agricultural may put his land. Procedure is prescribed under Section 65(1) of the Code, if the occupant wishes to apply his land to

any other purpose which contemplates, the making application to the Collector to seek his permission and the Collector embarking upon an inquiry before granting such permission. Such application can be made by the occupant alone and not by a transferee. That grant of permission for change of use from agricultural to non-agricultural necessarily contemplates, the payment of premium which is it popularly known.

4.19 The Section 65(A) of the Code is applicable where land is already held as non-agricultural purpose of one kind and where the occupant wishes to apply his land to hold another non-agricultural purpose. Even in such a case, prior permission is required to be applied for and granted. Therefore, no reliefs can be given under Section 65A of the Code to grant benefit of another which is granted by the circular dated 10/2/2003. The Section 65B of the Code provides for procedural use certain lands for bona fide industrial purpose. That only on the fulfillment of the following conditions notwithstanding anything contained in Section 65 or

Section 65A the provisions of Section 65(B) will be applicable viz. (1) that the land used or held for the purpose of agricultural or non-agricultural purpose not being an industrial purpose is (i) designated for the use of industrial purpose in the draft or final development plan or draft or final town planning scheme sanctioned under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as “Town Planning Act”) or (ii) in case where no such land is situate, where no such plan or scheme is referred in force it is designated by the State Government by notification in the Official Gazette for the use of such industrial purpose.

4.20 After relying upon Sec.65(B)(1) of the Code, the learned counsel has made the following submissions:

4.21 It is clear that only on fulfillment of above mentioned statutory provisions where any land held for agricultural purpose or non-agricultural purpose is designated for an industrial purpose in

any draft, final development plan or all final town planning scheme or where there is no such scheme in force is so designated by notification in the Official Gazette for use of industrial purpose only then Section 65B of Tenancy Act will apply.

4.22 Another statutory condition required to be fulfilled for applicability of Section 65(B) of the Code is fulfillment of the conditions prescribed in Section 65D of the Code. It is therefore, clear that the Circular dated 10/2/2003 purports to override statutory provisions by conferring benefits of deemed N.A., contrary to statutory provisions. Since it is made general in application without land being so designated for industrial purpose in any draft for final development plan or draft of final town planning scheme, or without it being so notified in the official gazette exist as provided under Section 65(B)(a)(ii).

4.23 Even, otherwise the storage of petroleum or petroleum products cannot be classified as storage of petrochemical products. Therefore, also illegal

arbitrary and invalid and unlawful manner, benefit of deemed N.A. is or to be conferred.

4.24 The learned counsel has submitted that the challenge to the circular dated 10/2/2003 requires to be upheld and the circular deserves to be quashed and set aside as being violative of the statutory provisions and is being contrary to law and therefore illegal, invalid, arbitrary and violative of Article 14 of the Constitution of India.

Third Facet of argument of petitioner:

4.25 The argument made by the learned counsel for the petitioner is that the third facet of the petition emanates from the policy as laid down in the resolution of the Ministry of Petroleum and Natural Gas, Government of India, published in the Gazette of India in Part I – Section I dated 8.3.2002 and published on 8.3.2002 which is on page 117 of the petition. The said Resolution points out that on the Government of India deciding to dismantling Administered Pricing Mechanism (APM) in

a phased manner, a group of Ministers for working out a specific framework for developing “India Hydrocarbon Vision 2025” was set up. The group submitted its report on 23.3.2000 which inter alia recommended to set up mechanisms to enable new entrants to establish own distribution networks of marketing without encroaching on the retail networks or the existing marketing companies.

4.26 Thus, it is clear that the policy of enforcement whereby the legitimate expectation of the petitioner and all citizens envisages the setting up of mechanism in the matter of establishment of own distribution networks without encroaching on the retail network of existing marketing.

4.27 It is only a fulfillment of conditions which are prescribed in para 3 I and II of the Circular dated 8.3.2002 which is on page 117 that promotion to establish own distribution networks for marketing can be established.

4.28 The learned advocate for the petitioner has invited attention of the Court to the Circular/Resolution dated 8.3.2002. Under the said Resolution, the Oil Company eligible to have benefit of the said policy and can only set up its own distribution set up meaning thereby setting up Company Retail outlets and under guise of setting up of distribution network they cannot appoint retail dealers. This is apparent from the provisions contained in para 3, 9, and 10 of the said resolution dated 8.3.2002. It is stated that by misinterpreting the said circular dated 8.3.2002, the State Government has issued Circular dated 12.3.2004 which a bare reading shows that it is for all Oil Companies.

4.29 Even, the said circular dated 12.3.2004 which starts at page 122 and more particularly, as per para 3 at pages 123-124 as well as in view of para 9, 10 at page 125 which clearly points out following aspects:

(1) That while setting up new retail outlet, there

should not be encroachment upon the retail outlets of existing Oil Company.

(2) That as per para 10, a plan in advance should be prepared and got approved for the purpose of installation of new retail outlets which are taken into consideration the following facts:

(i) Existing petrol/diesel pumps in the areas

(ii) Existing petrol/diesel vehicles

(iii) Only sell of petrol and diesel

(iv) The annual sell of the immediate existing outlet

(v) The likely effect on the existing outlet on account of installation and commissioning of new outlets and the need that the new outlet is likely to cater.

(3) It clearly lays down the following of the said procedure and such project plan has to be produced before the Government before installation of such new outlets which necessarily envisages prior permission of the State Government.

(4) That apart from the provisions of para 3 at

page 127, para 6 and para 9 which clearly shows that there can be no encroachment on the existing outlets of existing companies by such proposed new outlets. The said circular dated 12.3.2004 purports to be in furtherance of the resolution laid down policy by the Ministry of Petroleum and Natural Gas, Government of India, and as per its circular dated 8.3.2002 which does not fulfill the said policy to it tries to implement the policy of the Government of India by its own way by misinterpreting the provisions and policy of the Government of India.

4.30 The letter dated 22.11.2002 referred to of the Ministry of Petroleum and Natural Gas, Government of India, is not produced on record. That assuming that such letter exists, the said letter of a Secretary, by the Minister cannot either expand or purport to expand the scope and with misinterpreting the policy of the Government of India, the said letter cannot go beyond resolution of the Government of India.

4.31 In view of the aforesaid facts and circumstances of the case, the reliefs as prayed deserves to be granted to the petitioner.

4.32 The learned counsel has invited attention of this Court to similar petition filed before the Rajasthan High Court, affidavit filed by Union of India and the order of a Division Bench of the Jaipur Bench of the Rajasthan High Court dated 30.9.2004 in D.B. Civil Writ Petition No. 2487 of 2004 whereby directions are issued that the policy of the Government of India dated 25.9.2003/17.10.2003 and another policy issued by the Government from time to time shall be followed and shall not be violated in the establishment and instalment of petrol pumps.

4.33 Relying on the same the learned counsel submitted that the petitioner has prayed for similar relief which this Hon'ble Court may pass.

5. Contentions and averments on behalf of respondents No.1 and 2 State Government.

5.1 On behalf of respondents No.1 and 2, Mr.A.D.Oza, learned Government Pleader appeared and he has made following submissions:

5.2 He has relied upon the affidavit which has been filed on behalf of the State Government at the time of hearing of this petition and invited my attention to those affidavits filed by the State Government in this behalf. As regards State of Gujarat, one affidavit of one Laxmikant Raj, Under Secretary, Revenue Department, dated 30.7.2005 has been filed, particularly from page 304 onwards. Another affidavit of Ashok Pandya, Under Secretary, Roads and Building Department, dated 30.7.2005 has been filed. Another affidavit of K.M. Makwana, Under Secretary, Food Civil Supplies and Consumer Affairs Department dated 11.8.2005 has been filed. He has also relied upon Sec.65B of the Code which provides use of certain land for bonafide industrial purpose and explanation attached therein

in this behalf. The learned Counsel has also relied upon the Notification issued by the Government dated 4.2.2003 by which the Government has amended the Gujarat Land Revenue Rules, 1972, which are called “Gujarat Land Revenue (Amendment) Rules, 2001” and after Rule 87, new rules are inserted which provides notice for use of land for bonafide purpose viz. 87A, 87B, 87C. He has also relied upon the Circular issued by the Revenue Department dated 10.2.2003 which provides certain clarifications in this behalf. After referred to this the learned Government Pleader has made following submissions:

5.3 It is submitted that for the purpose of establishing and commissioning new petrol pumps the norms are suggested by (i) Ministry of Road Transport and Highways, Government of India (for short “MoRTH”), (ii) Government Resolution of Revenue Department dated 17.7.1980 (Ribbon Development Rules), (iii) Circulars issued by Food and Civil Supplies Department, Government of Gujarat, (iv) Circular issued by petroleum department, (v) Adoption and Implementation of the

norms is within the administrative power and control by Road and Building Department, Government of Gujarat.

5.4 It is submitted that when the application for new petrol pump is received from Oil Company/dealer of Oil Company, the opinions are invited by concerned District Magistrate/Collector from the Local Officer of Road & Building Department. As and when the opinion is received, the concerned District Magistrate/Collector considers the application, applicable norms, no objection certificate issued under the Petroleum Rules and thereafter necessary licence is issued as per the provisions of Petroleum Act and Petroleum Rules as also under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. It is thereafter that the new petrol pump is commissioned by the Oil Company or Dealer of the Oil Company.

5.5 So far as the challenge to the Circular dated 10/2/2003 is concerned, it is submitted that the

said circular is clarificatory in nature. It is submitted that as per Sections 65(B)(1)(b)(I) and 65(B)(1)(b)(II) of Bombay Land Revenue Code, when the occupant of the land wishes to use such land or part thereof for 'Bonafide Industrial Purpose' or for the purpose of manufacture or storage of any chemical or petro-chemical, it is open and lawful for the said occupant to use the said agricultural land for bonafide industrial purpose without the permission of the Collector, subject to various conditions stipulated. Therefore, when agricultural land is to be used for petrol pump, under section 65(B)(1)(b)(I) and (II), no prior permission of the Collector is required. However, the occupant has to send a notice of the date of commencement of such use along with particulars in such form as may be prescribed by the Gujarat Land Revenue (Amendment) Rules 2001. Copy of the said notice is also to be sent to the Mamlatdar. Thus, the provisions of the Amended Act and the Rules make adequate provision, providing for verification and check when the occupant invokes provisions of section 65(B)(1)(b)(I) & (II) of the Bombay Land

Revenue Code. It is, therefore, to be noted that use of agricultural land for “bonafide industrial purpose” i.e., for purpose of petrol pump is not unrestricted or uncontrolled, but it is checked by the authorities under the above referred Rules.

5.6 The circular dated 10.2.2003 only clarifies the Section 65(B) of the Code and is legal and valid. It is submitted that the provisions of Section 65(B) i.e., deemed NA is not applicable in the area within the jurisdiction of Urban Development Authority and for the area where the Town Planning Scheme exists. The reason for demarcation is that for such areas the respective authorities may have classified the said areas while implementing their own rules and regulations and hence so as to see that there is no conflict in the scheme on those legal authorities such demarcation is provided.

5.7 It is submitted that so far as the State Government authorities are concerned, the statutory rules and regulations are being

implemented by concerned authorities and as and when it is found or is brought to the notice of the authorities that any of the rules, regulations and norms are being violated by any of the Oil Companies or their dealers at the time of installation or establishing petrol pump then necessary actions in accordance with law are being taken against them by the concerned authorities, if such violation is prima facie found to have taken place.

5.8 It is further submitted that so far as respondent No.2 – Road & Building Department is concerned, the norms and the clarifications issued from time to time, applying to Road & Building Department, are being followed by the said department. Provisions of G.R. Of Revenue Department with regard to Ribbon Development Rules dated 17.7.1980 is being followed by respondent no.2, which are unanimously applied throughout the State of Gujarat. Stipulations provided under other circulars and guidelines including I.R.C. Guidelines are also looked into in the cases where

they apply. Considering the local of the Retail Outlet, the Road & Building Department gives the opinion to the Revenue Department and thereafter necessary permission is given for the new petrol pump by the Revenue Department and by the concerned department.

5.9 In view of the above, it is submitted that the present petition is frivolous, vexatious and is filed only with a view to continue the monopoly which the petitioner enjoyed till these years in establishing and running petrol pumps. It is only now when Government of India has introduced liberalized policies and have permitted private oil companies to establish new petrol pumps and the existing oil companies are also establishing new petrol pumps. The petitioners who have enjoyed monopoly in petrol distribution are filing the present petition only with a view to avoid new competition. It is submitted that in such circumstances, this Court should not entertain the present petition.

6. SUBMISSION OF MR. K.S. NANAVATI LEARNED SR. ADVOCATE WITH MR. CHUDGAR, LEARNED ADVOCATE FOR RESPONDENT NOS. 7, 10 AND 12:

6.1 Affidavit on behalf of respondent No. 7 has been filed by Nilesh Baxi, Vice President (Legal) with respondent No. 7 dated 8.7.2005. Another affidavit dated 15.7.2005 has been filed on behalf of respondent No. 7. On behalf of respondent No. 11 Hindustan Petroleum Corporation Ltd., an affidavit of Vivek Bharara, Sr. Regional Manager, dated 16.7.2005 has been filed. Affidavit on behalf of respondent No. 9 dated 29.7.2005 has been filed. Affidavit dated 29.7.2005 on behalf of respondent No. 12 has been filed. It may be noted that the petitioner has also filed rejoinder on 29.7.2005, against which the respondent has filed affidavit dated 2.8.2005. The petitioner has also filed rejoinder and sur-rejoinder dated 8.8.2005. The petitioner has also filed further affidavit dated 18.8.2005 against the affidavits filed by various Oil Companies.

6.2 The learned counsel for respondent No. 7 has made the following submissions:

6.3 It is submitted that the petitioner association has no right, much less any fundamental right to file the petition. None of the fundamental rights or legal rights of the petitioner association or its members are violated, for which petitioners would be entitled to file the present petition under Article 226 of the Constitution of India. Therefore, the petition deserves to be dismissed.

6.4 It is submitted that petition under Article 226 of the Constitution of India can be filed by a person to enforce his personal or legal right, if such rights are violated. In support of the aforesaid contention, the learned counsel has relied upon the judgment of the Apex Court in the case of Bhagwan Dass Vs. State of U.P., and others reported in (1976) 3 SCC 784, particularly para 6 on page 787 wherein the Apex Court has held that “the appellant cannot be heard to say in a writ

petition filed for the assertion of his own individual rights that the action of the Government is calculated to prejudice somebody else's rights and should therefore be struck down".

6.5 It is submitted that the guidelines which have been alleged to have been breached by the respondent in the course of installation of new Retail Outlets, are not a statutory guidelines. A petition, therefore, to enforce non-statutory guideline is not maintainable. In this regard, the respondent has relied on the following decision:

(1) Narendra Kumar Maheshwari Vs. Union of India and others reported in AIR 1989 SC 2138, para 99 & 100.

6.6 It is submitted that the petitioners are approaching this Court for enforcement of non-statutory guidelines viz., guidelines recommended by IRC etc., is not maintainable. The petitioners have failed to show that such guidelines are framed under any Act of the legislature or that they are statutory

norms. It is submitted that the petition to enforce norms/policies is not maintainable. The learned counsel for the respondent has relied on the following cases in support of the same.

(1) G.J.Fernandez Vs. The State of Mysore and others reported in AIR 1967 SC 1753 where the Apex Court has held that the State can give administrative instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government.

(2) The Samarth Transport Co. (P) Ltd., Vs. The Regional Transport Authority reported in AIR 1961 SC 93.

(3) State of Mysore and another Vs. I.K.N.Chandrasekhara reported in AIR 1965 SC 532.

(4) The State of Assam and another Vs. Ajit Kumar Sarma and others reported in AIR 1965 SC 532

6.7 It is submitted that if the action is unauthorised or illegal, the concerned authorities would take appropriate action as per law. The present petition of such general nature would not be maintainable and if and when any specific instances of violation of any statutory rules or regulations are found, the appropriate authority would initiate appropriate action as stipulated under law. As such, the present petition under the guise of the reliefs as prayed for, is in fact, seeking to stall installations and operations of new petrol pumps and thereby thwart competition, which should not be in the interest of justice.

6.8 It is also submitted that a general direction/injunction to the effect that the authorities shall act in accordance with law ought not to be granted, as has been held by this Court in the case of State of Gujarat Vs. Mangal Traders

reported in 1987 (1) GLH 493.

6.9 Without prejudice to the above preliminary objections/submission, it is further submitted as under:

6.10 That in any case, the applicable guidelines/norms are being followed by the respondents as and when they are applicable. The petitioners have merely reproduced in the written submissions as also in the petition the clauses of IRC Recommendations/MORTH norms and other circulars issued on the administrative side by the Government. Wherever such guidelines/norms are applicable, the same are being followed by the respondent.

6.11 It is submitted that the petitioners have referred to and relied upon those clauses which are favourable to them and have omitted to refer to and rely upon other clauses which permits installation of petrol pumps even within 300 mtrs. In this regard reference is made to clause 4.4.3 and 4.4.4 at page 83, which is the part of MORTH norms dated

25.9.2003/17.10.2003.

6.12 Therefore, it will be appreciated that the clustering (a group of similar thing position or occurring closely together) of the petrol pumps is permitted even as per the IRC recommendations on the conditions stipulated therein.

6.13 The petitioner has not specifically mentioned which specific norm of the MORTH or State G.R. Of 17.7.1980 are violated. But it appears that it refers to the inter-R.O., distance, i.e distance between two retail outlets as is the contention in the petition.

6.14 As stated in the affidavit in reply of RIL respondent No.7, the applicable guideline of MORTH (of 25.9.2003/17.10.2003) for installation of retail outlet on National Highways is being followed by RIL including the specific issue of maintaining distance between to retail outlets.

6.15 It is submitted that as per MORTH norms of 25.9.2003/17.10.2003, as provided at clause 4.4.3 and

4.4.4 of Appendix I to the norms, the clustering of retails are allowed within the stipulated distance subject to providing of service roads with common access to the adjoining retail outlets. RIL is following this norms wherever the R.O., is within the stipulated norms and MORTH have accorded approval to such arrangement, since it falls within the criteria of MORTH norms mentioned at clause 4.4.3 and 4.4.4.

6.16 As regards installation of retail outlets falling on State roads, the applicable guideline is that of State Government G.R. Of 17.7.1980 of Revenue Department. RIL is taking approval for retail outlets located on State roads under this G.R. Of 17.7.1980. State Government in its affidavit filed has also stated that this is the G.R. Under which NOC/approval for locating retail outlet on State roads is considered. It is submitted that as per the said G.R. Of 17.7.1980, there is no restriction on maintaining distance between two adjacent retail outlets. Para 2 of the said G.R., gives the applicable guideline for installation of R.O., on State roads. It is clear from this para 2 that there is no restriction or

minimum distance specified for locating retail outlet adjacent to any other outlet. The petitioner's contention and reference to said para 2 mentioning applicability of IRC is out of context. The said para 2 of G.R., specifies for following IRC recommendations only for internal construction within the retail outlet (with the R.O. Layout) beyond 30 m. from center line of road. Thus respondent No.7 is to follow IRC recommendations only for construction within its plot, beyond 30 m. from the centre line road i.e. beyond the first filling dispenser. It does not however specify any minimum distance to be maintained from any existing adjacent retail outlet. Thus, the petitioner quoting application of IRC norms for maintaining distance for location of retail outlet from any adjoining location on State Highways is out of context and is incorrect in light of the provisions of said G.R. Of 17.7.1980.

6.17 As regards the IRC recommendation, IRC 12-1983 the said recommendations are only recommendatory in nature and are not binding to the applicants. These are not statutory norms. The petitioner has not

substantiated his contention that IRC recommendations are statutory norms.

6.18 Moreover, IRC recommendations are also not suggesting total restriction on location of retail outlets within 300 m. distance from adjoining retail outlets. At clause 4.2 of the said recommendations, it allows to installation of R.O. Within 300 m. distance from adjoining retail outlet subject to providing service road. However, it is submitted that IRC recommendation are only recommendations and since not accepted by the Government fully, question of adherence to this recommendations does not arise, while issuing NOC/approval for installation of retail outlets on State roads. It will be absolutely correct to highlight that there are numbers of existing retail outlets seen on State roads located in close proximity within 300 m. Admittedly those retail outlets are of members of petitioner association. It is once again reiterated that IRC recommendation cannot be made applicable to R.O., to be located on State roads.

6.19 So far as the averments in the petition and in the written submission with regard to IRC recommendations, i.e. Town Planning Department Manual – Ribbon Development G.R. i.e. commonly known as Ribbon Development Rules; GDCR applicable to AUDA are concerned, a reference was made to the reply filed by respondent No.7. The learned advocate for the respondent has invited my attention to the averment made by them. Relying upon the same, the learned Counsel submitted that the State Government have given approval for access and hence retail outlets since long on the basis of the Government Resolution of Revenue Department dated 17.7.1980 in the State have come up. The norms circulated to the concerned authorities are in fact issued by the Ministry of Road Transport & Highways (MORTH), Government of India for considering installation of fuel stations on National Highway and, therefore, these norms are not applicable for installation of fuel stations on State highways.

6.20 It was further submitted that the Ministry of Petroleum & Natural Gas by the letter dated 27.5.2002

had given authorisation to respondent No.7.

6.21 It was further submitted that the recommended practice for location and layout as laid down by the Indian Red Congress are not mandatory and unless and until the IRC has statutory powers to make such rules, the same will not bind the respondent. It is denied that the Central Government has accepted the recommended practices. It was submitted that the Circular dated 25.9.2003/17.10.2003 issued by the MoRTH pertains to the norms for access for fuel stations, service stations and rest areas along National Highways and therefore the said circular would not be applicable in case of State Highways. It was submitted that necessary permissions have been obtained from the concerned Government depending upon the road on which a given fuel station is situated.

6.22 It was further submitted that as far as the present respondent has been able to ascertain the IRC recommendations are not accepted by the Central Government (i.e. MoRTH) in toto. It is also denied that the IRC recommendations have been accepted by

the State Government. It was further submitted that all the fuel stations in the State of Gujarat have been granted in past also the NOC based on the G.R., of 17.7.1980 popularly known as Ribbon Development Rules. It was further submitted that in the case of respondent also, the competent authorities of the State Government have granted NOCs based on the said G.R.

6.23 It was submitted that even in IRC recommendations (IRC-12-1983) there is no total ban as such for fuel stations within a distance of 300 mtrs., amongst each other, provided there is a service road opposite a given fuel station. The Government of India letter dated 17.10.2003 at Annexure “B” provide for setting up of RO within 300 mtrs., distance is not totally prohibited even along National Highways inasmuch as in para 4.4. of MoRTH norms. The location of RO within 300 mtrs., distance is permitted in urban stretch subject to the conditions as to service road be complied with.

6.24 It was further submitted that the guidelines

referred in sub-para 1 of para 2 of the guidelines annexed at Annexure “C” contemplates that the IRC Rules will be applicable with regard to “lay-out” and not with regard to “location” and in particular with regard to the recommendations of maintaining inter RO distance of 300 mtrs., as is sought to be contended by the petitioners. It was further submitted that so far as the present respondent is concerned, necessary permissions from the concerned competent authority was obtained under the guidelines known as “Ribbon Development Rules”, for Approach Road, and as per the conditions of permission for approach road demand notices issued for the payment is being satisfied and appropriate agreement is being executed for such Approach road. It was submitted that the said Ribbon Development Rules directed to comply with IRC norms only for the lay-out of the fuel station and for construction beyond the installation of kiosk (a small open-fronted hut or cubicle from which newspapers, refreshments, tickets etc., are sold) within the same plot. Thus, it will be appreciated that the norms for setting up of fuel station and the norms governing its distance between the two fuel

stations are not laid down in the said Ribbon Development Rules.

6.25 It may be noted that in para 14 of the affidavit in reply, it is clearly stated that respondent No. 7 is obtaining necessary permission from the competent authority i.e. the Executive Engineer under the guidelines commonly known as Ribbon Development Rules for approach road and as per the conditions of permission, for such approach roads, demand notices issued for payment is being satisfied and appropriate agreement is being executed for such approach road. It was further submitted that the said Ribbon Development Rules direct to comply with IRC norms only for the lay-out of the fuel station and for construction beyond the installation of kiosk within the same plot. Thus, the norms for setting up of fuel station and the norms governing its distance between the two fuel stations are not laid down in the said Ribbon Development Rules.

6.26 The Ministry of Petroleum & Natural Gas has issued a letter dated 27.5.2002 and give authority to

the respondent No.7 to market MS & HSB as laid down in GR dated 8.3.2002 in this behalf.

6.27 It was submitted that it is mentioned in the G.R.dated 8.3.2002 Annexure “F” to the petition that the Govt.of India, under its Resolution No.224 dated 21.11.1997 decided for “Dismantling of Administered Pricing Mechanism” in a phased manner. It further mentioned that in March 1999 the Prime Minister set up a group of Ministers for working out a specific frame up for developing India Hydro-carbon Vision – 2025. In the report, as mentioned in the Resolution, the Group of Ministers recommended the marketing rights for transportation of fuel be made conditional to a Company investing or proposing in exploration or production, refining, pipeline or terminals. The G.R., further states that the Govt. of India has decided to grant authorisation to market and transport fuel viz., MS, HSD and ATF to new entrants including private sector. After taking into account the recommendations of the report “India Hydro-carbon Vision 2025”, the guidelines for granting authorisation to market transportation fuel have been

laid out in the later part of the Resolution. The salient features of the guidelines relied upon by the learned counsel for the respondent which is set out in the affidavit-in-reply. It was submitted that the resolution dated 8.3.2002 of the Government of India (Annexure “F” of the petition) does not debar the respondent No.7 from appointing a dealer for functioning of the petrol pump, which is evident from clause 10 thereof. In any case, the functioning of petrol pumps and such ancillary activities through a dealer is an established commercial practice and also recognized in law. It was further submitted that so far the respondent No.7 is concerned, the authorization to market M.S., and HSD have been granted to it vide MoP & NG letter No.P-23014/1/2002/MKT dated 27.5.2002 which is produced with the said affidavit-in-reply. It was mentioned amongst other things that the respondent No.7 and its dealers would have to abide by the conditions laid down in G.R., dated 8.3.2002 and authorization letter dated 27.5.2002. From these documents also, it is clear that the respondent No.7 is free to appoint dealer for running and functioning of the petrol

pumps.

6.28 As regards salient features of the guidelines is concerned, it was submitted that on various investments made therein different criteria are to be given, the same has been referred in the affidavit-in-reply on pages 181 to 183. One of the important guideline is that if the Company desirous of obtaining authorization to person applicable in the prescribed form giving details of the scheme, no limit of the quantum and size of the scheme and number and location of retail outlets in the scheme, provided that no encroachment on the retail outlets will be allowed. The details to be furnished in the marketing scheme also mentioned in the paras.

6.29 It was further stated that the Government or the Regulatory Board to patronize the scheme by the eligible Company by imposing certain conditions laid down in clause 13 of the said guidelines. It was stated that authorization once issued is not to be withdrawn unless there is violation of condition in this behalf. The Company has also to inform the

Government or Regulatory Board of major changes in the scheme of marketing. The Central Government has also power to approve the scheme till such time as the Regulatory Board is formed. The authorization to be granted by the Government upto 1.4.2002 or till the dismantling Administered Pricing Mechanism and of setting up of a functioning regulatory mechanism. During the Administered Pricing Mechanism, Company having made in full the specified investment in eligible activities will be given authorization. Those Companies that have not made investments eligible for authorization only dismantling of the Administered Pricing Mechanism compensation from the oil pool, details accounts are also given. In case of any doubt or dispute as regards to any of the provisions of these guidelines, decision of Government of India will be final and binding.

6.30 The learned counsel has also invited my attention to the affidavit-in-reply and stated that since the Circular dated 12.3.2004 at Annexure “G” to the petition was inconsistent with the conditions of authorisation granted by the Central Government of

India, another Circular dated 17.12.2004 was issued by the Government of Gujarat clarifying certain aspects. The said circular cannot be termed as misinterpreting the earlier circular dated 12.3.2004. On the contrary, the circular dated 17.12.2004 clarifies certain aspects so as to be in consonance with the Government of India's Resolution.

6.31 The learned counsel has relied upon para 19 of the affidavit-in-reply and pointed out condition in the Government of India Notification of 8th March, 2002, and/or letter of authorization dated 27th May, 2002, in favour of respondent No.7 which is on pages 188, 189 and 190 of the affidavit-in-reply. After relying upon the same, it was submitted that the circular dated 12.3.2004 Annexure “G to the extent that it imposed restrictions that maintaining distance from an existing retail outlet goes beyond the guidelines issued by the MoPNG and GR at Annexure “F” and the authorisation letter dated 27.5.2002 is inconsistent with the directions of the Central Government. The other conditions of the circular at Annexure “G” are contrary to the instructions

imparted by the Government of India in their letter dated 22.11.2002 and are contrary to the philosophy of dismantling of administrate price mechanism. It is an anathematic to the policy as laid down in the resolution dated 8.3.2002. Since they are inconsistent, it is but appropriate that they have been revised by Food & Civil Supplies Department under their communication dated 17.12.2002. The list of such locations was communicated to the District Collectors under their communication dated 22.4.2004 and 20.11.2004. It was further submitted that the respondent has been furnishing such lists to the Food & Civil Supplies Department as per their planning for locations of retail outlets.

6.32 It was further submitted that the conditions mentioned in the circular at Annexure “G” dated 12.3.2004, the conditions at Sr.Nos. 1,3,5,6 and 7 are consistent with the letter of 27.5.2002 and the resolution on 8.3.2002. The rest of the conditions laid down in the circular at Annexure “G” dated 12.3.2004 are inconsistent with the letter dated 27.5.2002 and the resolution dated 8.3.2002. In view

of the same, it was further submitted that the instructions imparted in paras 8, 9 and 10 of the Circular at Annexure “G” are beyond the scope of the State Government and not contemplated under the G.R., at Annexure “F” and a letter granting marketing rights to the respondent No.7. It was further submitted that the Circular at Annexure “F” the Circular dated 12.3.2004 – Annexure “G” to the extent that it imposed restrictions that maintaining distance particularly in para 9 from an existing retail outlet goes beyond the guidelines issued by the MoPNG and GR at Annexure “F” and the authorisation letter dated 27.5.2002 is inconsistent with the directions of the Central Government.

6.33 It was further submitted that the Government of India did not intend to laid down any guidelines which would restrict the freedom of even the private oil companies to chose location of its retail outlets, and has in fact declared its policy to allow the authorized private companies to have freedom in setting up new outlets as per their commercial wisdom as would be appreciated from the authorization

letters issued in favour of the respondent No.7. The right to chose the place of location of business is a part of the right to do business guaranteed by Article 19(1)(g) of the Constitution of India, on and in absence of any reasonable restrictions imposed by law made in consonance with Article 19(6) of the Constitution. Therefore, an enlarged meaning to the words “no encroachments on existing outlets” cannot be given to. The expression “encroachment” is used only to prevent the authorized private companies from operating through a dealer with whom another marketing company has entered in an agreement for marketing petroleum products. The said word “encroachment” has no relevance to any trading areas because there is no zonal demarcation made for the retail outlets and the locations of the retail outlet would depend upon the commercial consideration and viability in setting up the retail outlets in the wisdom of the authorized private company like the respondent No.7. Thus, the contention regarding alleged encroachment sought to be advanced by the petitioners is absolutely baseless and devoid of any merits and is, therefore, denied and not admitted by

the respondent No.7.

6.34 The second facet of the submissions on behalf of the petitioners is with regard to the circular dated 10.2.2003. It is submitted that the said circular is clarificatory in nature and is valid and legal. It is submitted that as per the said circular which clarifies the position with regard to Section 65, 65A and 65B of the Bombay Land Revenue Code, the permission for use of agricultural land for non-agricultural purpose, to be obtained from the Collector prior to its use is not required to be taken, when the said land is to be used for bona fide industrial purpose by its occupant. It is submitted that Section 65B was introduced vide the amending Act i.e. Gujarat Act No. 6 of 1997, in the Bombay Land Revenue Code which was published in the final gazette 6.3.1997.

6.35 In view of Section 65B(1)(b)(I) when the occupant wishes to use agricultural land or part thereof for bona fide industrial purpose, other than the purpose of manufacture or storage of any chemical

or petrochemical, it shall be lawful for him to use such land for such bona fide industrial purpose without the permission of the Collector, subject to the fulfillment of the condition stipulated therein. Further in view of Section 65B(1)(b)(II) when the occupant wishes to use agricultural land or part thereof for the purpose of manufacture or storage of any chemical or petrochemical, it shall be lawful for him to use such land for such bona fide industrial purpose without the permission of the Collector subject to fulfillment of the conditions stipulated therein.

6.36 It is submitted that it will be appreciated that when the agricultural land is to be used for industrial business or enterprise, it will fall under the expression bona fide industrial purpose. Further the service industry would also fall under the expression bona fide industrial purpose. Without prejudice to the above, even as per Section 65B(1)(b)(II) so far as retail outlets are concerned, it would also mean storage of chemical or petrochemical. Therefore, for retail outlets, N.A. Permission is not

required to be obtained, if the conditions are satisfied.

6.37 It is submitted that petrol diesel etc., are part of petro-chemical and chemical and therefore, there is no requirement for obtaining permission in view of the provision of deemed N.A. Contained in Section 65B of the Bombay Land Revenue Code. In this regard, he has relied upon para 23 of the reply of RIL on page 194.

6.38 It is also further denied that the petrol and diesel are made of various hydrocarbons mixture called petrochemical like olefins, paraffins or naphthenes etc. There is no doubt that the petrol and diesel are made of mixture of above mentioned constituents which are called and identified as petrochemicals. Because of the use of these chemicals the products called MS and Diesel, as fuels they have come to be popularly known as fuels. However, they are chemical by any definition. Being the chemicals, derived from petroleum (crude oil), they are petrochemicals.

6.39 There are more than 5 lac chemicals in the world. There are many petrochemicals in the market. As per the Hawley's list, there are at least 175 petrochemicals identified. As per different reference sources, there are many more. As per Encyclopedia Britannica, the definition of Hawley is incomplete because there are inorganic compound also which are called as petrochemicals and if these are included the list will still increase. (Sulfur and Ammonia, though inorganic are considered petrochemical because their origin is from petroleum – p.915 of Britannica). In other words, there is no sacrosanct definition of petrochemicals as proposed to be advanced in the petition as mentioned in a particular technical dictionary.

6.40 It is clear from the provision of the Bombay Land Revenue Code that the objective of the Legislature was of allowing all the activities involved in manufacture or storage of chemicals or petrochemicals as bonafide industrial activities for the purpose of Section 65B of Bombay Land Revenue

Code. It has not specified the type of chemicals to be considered eligible. Neither it has specified organic or inorganic petrochemicals. Legislature has not made any distinction between types of or classification of chemicals or petrochemicals for the purpose of eligibility under the proviso of Section 65B of Bombay Land Revenue Code. Therefore, the intention of the Legislature is to include all the chemicals and petrochemicals as eligible. There is no apparent intention of excluding any chemicals or petrochemicals. Legislature, in its wisdom, has not aimed at use of this provision for any specific or given compounds by their type or by their use. This is to say that only specific products used in specific type of industries or having specific application or use are qualified for the purpose of Section 65B of Bombay Land Revenue Code. Considering this, it will not be correct to conclude that compounds, or chemicals, like petrol (MS) and diesel (HSD) which are hydrocarbons, which are also produced from the petroleum (most ultimate naturally occurring raw material), which are from the same family group as that of Petrochemicals, which themselves are

mixture of petrochemicals are excluded as petrochemicals or chemicals for availing provisions of Section 65B of Bombay Land Revenue Code.

6.41 Thus, in view of Section 65B of the Bombay Land Revenue Code, NA permission is not required to be obtained prior to installation of retail outlet, since the said land is used for bonafide industrial purpose, however, the conditions stipulated in Section 65B and more particularly in Section 65B(2), (3), (4), (5) and as stipulated in Rules 87A to 87C of the Bombay Land Revenue Rules, 1972 are to be fulfilled. He relies upon the Amended Rules. Therefore, it cannot be said that setting of retail outlet in view of Section 65B goes unchecked, but is subject to fulfillment of the conditions as stated above.

6.42 While, in such cases no prior permission needs to be obtained which is otherwise required under Sec.65 of Bombay Land Revenue Code, adequate care has been taken in the said Section itself, with regard to class of land, the area of land for which such

enabling provisions can be availed of. It may be noted that Section 65B can be invoked only in respect of the area, for which it is provided for in the said Section itself i.e., the conditions as stipulated in the said Section are to be complied with. The deemed N.A., provision is not available when the land is reserved for a specific purpose in the draft of final development plan or T.P.Scheme. It is also not available, when the land is not available for acquisition or is within 5 kms., of the periphery of the area within the jurisdiction of Area Development Authority or Urban Development Authority under the Gujarat Town Planning & Urban Development Act. Thus, in those areas which have been specified in Section 65B(1)(b)(i) and in Section 65B (1)(b)(ii), the deemed N.A. Provision cannot be applied and the previous permission for N.A., use has to be obtained. Thus, for the areas as specified above, the respondent No.7 does take the prior N.A. Permission. It may kindly noted that, respondent No.7 is strictly following provision of applicable statutes/rules at the time of installation of the retail outlets. The apprehensions/allegations that the respondent No.7 is

wrongly not taking previous N.A. permission, are absolutely false and baseless.

6.43 Reply to third facet of arguments by petitioners:

6.44 The third facet of the submissions by the petitioners are stated in para 35 onwards of the written submission, which if pin-pointed to the effect of “No encroachment on the existing retain outlets” and no dealer to be appointed by private oil companies. In this regard, it is submitted as under.

6.45 With regard to the submission of petitioner that installation of new retail outlets amounts to “encroachment” is absolutely baseless and frivolous. In fact, the Government of India in the Resolution dated 8.3.2002 Annexure “F” to the petition, have permitted private oil companies to choose the place of location of business is flowing from the right to do business guaranteed under Article 19(1)(G) of the Constitution. Therefore, an enlarged meaning to the words “no encroachments on the existing retail

outlets" cannot be given. The expression "encroachment" is used in the authorization resolution, only to prevent the authorized private companies from operating through a dealer, who is an existing dealer of another oil marketing company and has entered into an agreement with another oil marketing company. The word "encroachment" has no relevance to any trading area because there is no zonal territorial demarcation of the area within which a particular petrol pump has to cater. Such an argument of the petitioner is absolutely absurd, baseless and devoid of merits.

6.46 With reference to the argument by the petitioner that a private oil company cannot appoint a dealer to operate the petrol pump, it is submitted that the authorization granted to the private oil companies do not debar appointment of a dealer. It is submitted that such a dealer is an agent of the private oil company and therefore it is the company who is marketing the petroleum products through its agent. In any case, Clause XIII (b) of the resolution dated 8.3.2002 Annexure "F" pg. 117 at

page 120 makes it clear that private oil company can also operate through a dealer, however, it cannot operate through a dealer with whom another oil marketing company has entered into an agreement for marketing of fuel or an agreement for retail outlet. Therefore, the contention of the petitioner relying on Clause X of the resolution dated 8.3.2002 that private oil company cannot appoint a dealer but has to operate through the company itself or through its subsidiary or through its joint venture company is totally baseless and devoid of merits in view of Clause XIII(b) of the said G.R. It is also submitted that “no encroachment on the existing retail outlet” has to be read along with Clause XIII(b) which makes it clear that the encroachment is with regard to encroaching upon or using the existing retail outlet of another oil marketing company and/or appointing the dealer who is an existing dealer of another oil marketing company.

6.47 Thus, the submissions on behalf of the petitioner with regard to “encroachment” and “no dealers for private oil company” are devoid of

merits, baseless and contrary to the G.R., dated 8.3.2002. It is also submitted that the project plans as stated in the resolution dated 8.3.2002 are being submitted by the respondent to the concerned authorities.

6.48 The learned counsel has relied upon the order dated 30.9.2004 of Division Bench of Jaipur Bench of Rajasthan High Court as well as another order of Rajasthan High Court dated 31.8.2005 in the case of Dalpatsingh Vs. Union of India and also other orders passed by Madras High Court, Jabalpur High Court which are to the effect that the policies of the Government of India shall be followed and shall not be violated in establishment of petrol pumps. In this regard, he submitted that the respondents are not violating any of the statutory rules or regulations as framed by Government of India or the Government of Gujarat. Therefore, there is no question of issuance of such direction. In any case, as per the judgment reported in 1987(1) GLH 493 in the matter of State of Gujarat Vs. Mangal Traders and particularly in view of para 8 thereof, such

directions are not required to be granted.

7. The learned Senior Counsel for the respondent has submitted that this aspect has not been examined by the Rajasthan High Court in the matter of Dalpatsingh Vs. Union of India in SC Civil Writ Petition No.1548 of 2005 on which the petitioner has made reliance. He has further submitted that the Rajasthan High Court has purported to give mandatory directions which is contrary to the observations of the Hon'ble Supreme Court in the aforesaid judgments.

7.1 The learned Counsel has relied upon the following decisions in support of their contention.

(1) The Nagar Rice & Flour Mills and others Vs. N.Teekappa Gowda and Brothers and others Vs. 1970(1) SCC 575. It was stated that under Article 19(6) a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to effect his trade or business adversely.

(2) Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others reported in (1976) 1 SCC 671.

(3) Northern Plastics Ltd., Vs. Hindustan Photo Films Mfg. Co. Ltd., and others reported in (1997) 4 SCC 452 where the Hon'ble Supreme Court has interpreted person aggrieved under Section 129A of the Customs Act.

(4) The Deputy Assistant Iron and Steel Controller, Madras and another Vs. L.Manickchand Proprietor, Katralla Metal Corporation, Madras reported in AIR 1972 SC 935 where grant of import licence under provisions of Imports and Exports (Control) Act, the Hon'ble Supreme Court has held that there is no absolute right have applied.

(5) M/s.Andhra Industrial Works Vs. Chief Controller of Imports and others reported in AIR 1974 SC 1539.

(6) K.M.Shanmugam, Proprietor, K.M.S.Transport Tanjore, Madras State Vs. The S.R.V.S. (P) Ltd.,

and others reported in AIR 1963 SC 1626.

(7) Ramana Dayaram Shetty Vs. The International Airport Authority of India and others reported in AIR 1979 SC 1628 which is a case of tender.

(8) The Samarth Transport Co. (P). Ltd. Vs. The Regional Transport Authority, Nagpur and others reported in AIR 1961 SC 93.

(9) State of Gujarat Vs. Mangal Traders, Jamnagar reported in 1987(1) GLH 493.

8. On behalf of respondent No.9 – Indian Oil Corporation Limited, an affidavit of Shri Sanjeev Yadav, Chief Retail Sales Manager working in respondent No.9 Corporation has been filed. The deponent has also raised the contention which has also been raised by respondent No.7. He has submitted that none of the fundamental rights or legal right of the petitioners are violated for which the petitioners would be entitled to approach this Court under Article 226 of the Constitution of India.

8.1 It was further submitted that there was no criteria for maintaining or governing locations and/or distance between two fuel stations applicable on State Government roads. It was submitted that the State Government have given approval for access and hence retail outlets since long on the basis of the Government Resolution of Revenue Department dated 17.7.1980 in the State have come up. It was submitted that the fuel stations of some of the members of petitioner No.1 Association are also situated in close proximity within 300 mtrs., distance at many locations. It was further submitted that the recommended practice for location and layout as laid down by the Indian Red Congress are not mandatory and it is not admitted that the Central Government has accepted the recommended practices.

8.2 It was further submitted that the Circular dated 25.9.2003/17.10.2003 issued by the MoRTH pertains to the norms for access for fuel stations, service stations and rest areas along National

Highways and therefore the said circular would not be applicable in case of State Highways. It was further submitted that the guidelines of Town Planning and Valuation Department at Annexure “C” to the petition and in particular clause 2 thereof will be applicable for locations is not wholly true.

8.3 It may be noted that the guidelines referred in sub-para 1 of para 2 of the guidelines annexed at Annexure “C” contemplates that the IRC Rules will be applicable with regard to “lay-out” and not with regard to “location” and in particular with regard to the recommendations of maintaining inter RO distance of 300 mtrs., as is sought to be contended by the petitioners.

8.4 It was further submitted that the respondents are obtaining necessary permission from the concerned competent authority i.e. the Executive Engineer under the said guidelines known

as Ribbon Development Rules for approach road, and as per the conditions of permission, for such approach roads, demand notices issued for payment is being satisfied and appropriate agreement is being executed for such approach road. It was further submitted that the said Ribbon Development Rules directed to comply with IRC norms only for the lay-out of the fuel station and for construction beyond the installation of kiosk within the same plot. Thus, it will be appreciated that the norms for setting up of fuel station and the norms governing its distance between the two fuel stations are not laid down in the said Ribbon Development Rules.

8.5 It was further submitted that the fuel stations are installed on the State roads which now have been converted into National Highway, which are not in conformity with IRC norms with regard to inter fuel stations distance of 300 mtrs. Had it been the State Government Policy to restrict installation of fuel stations in proximity within 300 mtrs., distance, such adjacent fuel stations which are admittedly several in numbers in the

State would not have been permitted to be installed.

8.6 It was further submitted that, so far as the respondent No.9 is concerned, it is installing its retail outlets only after obtaining the NA permission from the concerned authorities, therefore the contentions raised in the paragraphs under reply are not directly concerning the respondent No.9 and hence the respondent No.9 does not offer any comments thereto in this behalf. It was further submitted that it is not admitted that the construction or installation of new retail outlets undertaken by the respondent No.9 is in breach of any of the statutory law or rules and regulations framed under any law.

8.7 It was further submitted that, so far as the issue of encroachment raised by the petitioner is concerned, the respondent No.9 is not encroaching upon any existing dealers of other oil companies. The allegations and contentions raised in the petition with regard to so called encroachment, is absolutely baseless, devoid of merits and is denied

and not admitted by the respondent No.9. The respondents have relied upon the various orders of High Courts dealing with similar situation in this behalf.

9. On behalf of respondent No.12 – IBP Limited, one Shri Hanskumar B.Singh, has filed affidavit. In the said affidavit he has also raised similar contention which has been raised by the respondent No.7. They also stated that they had not committed any breach or regulation and they are also constructing petrol pump as per the guidelines issued by the State Government in this behalf.

9.1 Mr.Jitendra Malkan, learned Assistant Solicitor General appears on behalf of Union of India after referring certain documents which are issued by the Central Government has tried to support the contention of the State Government as well as the oil companies and stated that the oil companies have complied with provisions of the Act and the Rules particularly Petroleum Act and the Rules in this behalf.

CONCLUSION:

10. I have considered various facts and circumstances of the case and the contention of the petitioner as well as affidavit-in-reply filed on behalf of the State Government and various oil companies in this behalf.

11. I have considered the contention raised by the petitioner. I have also considered the contention of the State Government, Union of India and various oil companies which I have noted in this behalf. In view of this, I have to consider various statutory provisions of Bombay Land Revenue Code, Tenancy Act, Gujarat Town Planning and Urban Development Act and the Rules and thereafter the various communications issued from time to time.

11.1 Before I consider the various provisions of the Act and the Rules, I would also like to consider the fact that why the Government has amended the Act and the Rules so as to facilitate various petrol companies to install petrol pump in this behalf. It appears that the State desire to have economic development and economic growth. That is why we have to consider Why the Government

desire to amend the law and desire to have industrial development and industrial growth. It is well known that the magnificent treatise that the Constitution of India begins with the glorious preamble which guarantees to the entire people of the country. Justice, social economic, political, liberty of thought and expression, belief, faith and worship, equality of status and opportunity, fraternity, assuring the dignity of the individual. The above preamble has to be considered in light of fundamental rights particularly Articles 14, 19, Article 21 as expounded by the Hon'ble Supreme Court and also directive principle of State policy under Articles 38, 39, 39A, 41 and 43 of the Constitution of India. From this preamble and Constitution of India that the State Government and Union of India is expected to permeate and monitor social justice. Justice means the reconcilement of the individual conduct with the welfare of the society as a whole. The actions of an individual are “just” only if they promote the well-being of the society. The aim is to promote the common good

rather than only the individual welfare. A large number of the enacting provisions of the Constitution can be read to show the ideal of social and economic justice. Justice, briefly speaking, is the harmonious reconcilement of individual conduct with the general welfare of the society. Every man acts according to his self-interest, but his act or conduct is said to be "just" only if it promotes the general well-being of the community. The essence of justice is the attainment of the common good as distinguished from the good of individuals or even of the majority of them. Our Constitution professes to secure to all its citizens social, economic and political justice, even though the form of government prescribed by the Constitution is a majority government which lies at the foundation of the representative system. In the Preamble, the Constitution speaks of other forms of justice which a welfare State is bound to dispense to the people who made the Constitution. It may be noted that we have also large number of unemployment and if the

employment is to be given that will also go a long way. In view of this provisions, it appears that the State Government as well as Union of India have made sincere efforts to see that there may be industrial growth and industrial development and for that they have amended the laws in this behalf. We have to see all these amendments in light of this aspect.

12. <u>Bombay Land Revenue Code.</u>

"Sec.48 of the Bombay Land Revenue Code provides manner of assessment and alteration of assessment.

(1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land -

(a) for the purpose of agriculture.

(b) for the purpose of residence.

(c)for the purpose of industry.

(d) for the purpose of Commerce, or

(e) for any other purpose.

12.1A What the Legislature specifically provided

for was the condition precedent, on fulfillment of which the liability for altered assessment could arise only, when there was actual change of user and not from a prior date.

12.1B Sec.65 provides uses to which occupant of land for purposes of agriculture may put his land. The said section further provides procedure if occupant wishes to apply his land to any other purpose.

12.1C Sec.65A provides procedure that if occupant wishes to apply his land from one non-agricultural purpose to another non-agricultural purpose.

12.1D Sec.65-B and Sec.65(B)(1) (relevant part) of the Bombay Land Revenue Code which reads as under:

“Sec.65B – Use of certain lands for bona fide industrial purpose – (1) Notwithstanding anything contained in Section 65 or 65A, where -

(a) any land used or held for the purpose of agricultural or, as the case may be, for any non-agricultural purpose not being an industrial

purpose is,

(i) designated for the use of industrial purpose in the draft or final development plan for draft or final town planning scheme under the Gujarat Town Planning and Urban Development Act, 1976;

(ii) situated in the area where no plan or scheme referred to in sub-clause (i) is in force and is designated by the State Government, by notification in the Official Gazette, for the use of such industrial purpose as may be specified therein, having regard to such factors as may be prescribed by rules made under this Act in this behalf.

“(b) the occupant of such land wishes to use such land or part thereof-

(I) for a <u>bonafide industrial purpose other</u> than the purpose of manufacture or storage of any chemical or petrochemical,

it shall be lawful for him to use such land for

such bonafide industrial purpose without the permission of the Collector subject to the fulfillment of the following conditions, namely:-

(a) the occupant has a clear title to such land.

(II) for the purpose of manufacture or storage of any chemical or petrochemical,

it shall be lawful for him to use such land for such bonafide industrial purpose without the permission of the Collector subject to the fulfillment of the following conditions, in addition to the conditions mentioned in sub-clause (I), namely:-

“(2)(a) The occupant shall comply with the provisions of any law for the time being in force or any order or direction of the Central Government or State Government or any, Corporation owned or controlled by such Government, Government Company, local authority in relation to use of land for a bonafide industrial purpose under sub-section (1) before the land is put to use for such purpose.

(b) Where an occupant commences the use of the land for a bonafide industrial purpose under sub-section (1), he shall within thirty days from the date of commencement of the use of land for a bonafide industrial purpose, send a notice of the date of commencement of such use, alongwith other particulars in such form as may be prescribed by rules made under this Act, to the Collector and endorse a copy thereof to the Mamlatdar.

(3) Where, on the receipt of such notice alongwith other particulars sent by the occupant under clause (b) of sub-section (2), the Collector, after making such inquiry as he deems fit -

(a) is satisfied that the occupant of such land has validly commenced the use of the land for a bonafide industrial purpose under sub-section (1), he shall issue a certificate to that effect to the occupant in such form and within such period as may be prescribed by rules made under

this Act,

(b) is not so satisfied, he shall, after giving the occupant an opportunity of being heard, refuse to issue such certificate:

Provided that no such certificate shall be issued under clause (a) unless the conversion tax leviable under section 67-A is paid."

12.1E I also refer to Explanation (I) to Section 65(B) gives meaning of "bonafide industrial purpose" which is reproduced hereunder:

"Explanation I. For the purposes of this section, section 48 and section 67-A, the expression "bonafide industrial purpose" means an activity of manufacture, preservation or processing of goods, (other than the hazardous and toxic chemicals specified in Part II of the Schedule I to the Manufacture, Storages and Import of Hazardous Chemicals Rules, 1989 made under the Environment (Protection) Act, 1986 (29 of 1986) and for the time being in force)

or any handicraft, or industrial business or enterprise, carried on by any person and includes construction of industrial buildings used for the manufacturing process or purpose, or power projects or port projects and ancillary industrial usage like research and development, godown, canteen, office building of the industry concerned, or providing housing accommodation to the workers of the industry concerned, or establishment of industrial estate including a co-operative estate or service industry or tourism or cottage industry".

"Explanation II - For the purposes of this section, an occupant shall be deemed to have commenced the use of land for a bonafide industrial purpose from the date on which he ceases to use the land for agricultural or non-agricultural purpose existing immediately before the date of such cesser."

12.1E(i) Sec.48(2)(A) provides that "where any land

assessed for any purpose is used for bonafide industrial purpose under section 65B and a certificate to that effect is issued to the occupant of such land under that section, the assessment fixed under the provisions of this Code upon land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate with effect from the commencement of the revenue year in which the use of the land for a bonafide industrial purpose is commenced, by such authority and subject to such rules as the State Government may prescribe in this regard. On the conjoint reading of Sec.48 of the Code as well as Sec.65B particularly Sec.65B(1)(b)(II) as amended by Gujarat Act 6 of 1997 provides that “notwithstanding anything contained in Section 65 or Section 65A, where the occupant of the land wishes to use such land or part thereof for the purpose of manufacture or storage of any chemical or petrochemical, it shall be lawful for him to use such land for such bonafide industrial purpose without the permission of the Collector subject to fulfillment of

the conditions laid down therein. In view of the aforesaid provisions, the commencement of such non-agricultural use for bonafide industrial purpose, without the prior permission of the Collector, under Section 65 is permitted in the form of deemed N.A. In view of this particularly Section 65(B)(2)(b) it becomes very clear that after starting such use of land for bonafide industrial purpose, he has to send a notice of the date of commencement of such use along with the particulars in such forms as may be prescribed by rule made under the Act to the Collector and endorse the copy thereof to the Mamlatdar.

12.1F In view of the explanation I and II of Sec.65B of the Act, it appears that when the agricultural land is to be used for “industrial business” or “enterprise”, it will fall under the expression “bonafide industrial purpose. Further the “service industry” would also fall under the expression bonafide industrial purpose. So far retail outlets are concerned, Sec.65B(1)(b)(II) it would also mean “storage of chemical or petrochemical”,

therefore, for retail outlets, N.A., permission is not required to be obtained if the conditions are satisfied.

12.1G It is clear from the provisions of the Bombay Land Revenue Code that the objective of the legislature was of allowing all the activities involved in manufacture or storage of chemicals or petrochemicals as bonafide industrial activities for the purpose of Section 65B of the Code. Therefore, the intention of the legislature is to include all the chemicals and petrochemicals as eligible. From the provisions of the Code it is not correct to conclude that compounds or chemicals like petrol (MS) and diesel (HSD) are excluded as petrochemicals or chemicals for availing provisions of Section 65B of the Code.

12.1H The Government of Gujarat has amended the Gujarat Land Revenue Rules, 1972 by Amendment Rules 2001 by which Rules 87-A, 87-B, 87-C and 100-A and other forms are introduced.

12.1I Rule 87-A provides notice for use of land for bonafide purpose which provides that when an occupant commences to use his land for bonafide industrial purpose under Section 65-B, he shall send a notice and other particulars in Form M-1 to the Collector and endorse a copy thereof to the Mamlatdar.

12.1J Rule 87-B provides issue of certificate. The said rule provides that on receipt of the notice referred to in Rule 87-A the Collector, after making inquiry, is satisfied that the occupant of land has validly commenced the use of the land for bonafide industrial purpose, he shall issue a certificate to that effect to the occupant, in Form M-2 within three months from the date of receipt of such notice.

12.1K Rule 87-C provides notice for breach of provisions of Sec.65-B.

12.1L Rule 100-A provides that the Collector shall consider the following circumstances and factors,

when an application is made by an occupant for extension of time limit as provided under proviso to clause (a) and sub-sec.(5) of Sec.65-B. In the said rule they have provided Form M-1 under Rule 87-A which provides form of notice to be sent by an occupant while using his land for a bonafide industrial purpose under Section 65-B of the Bombay Land Revenue Code. Form M-2 provides form of certificate to be issued to the occupant of the land who has started bonafide industrial purpose of his land under Section 65-B of the Bombay Land Revenue Code. Form M-3 provides form of notice to be served under sub-section (4) of Section 65-B of the Bombay Land Revenue Code, 1879.

12.1M This provisions of Amended Act and the Rules makes it clear that there are adequate provision providing about verification and check guard and it is not unrestricted, uncontrolled and no total free atmosphere provided to such users. The Government has to consider the requirement of public, such distribution of petrol/diesel to the public by retail outlets/petrol pumps amounts to public service. Such

establishment of retail outlets is required as it is not possible in a widespread network as well the wide spread public demand, to distribute or provide the product – petrol/diesel directly to the consumers by the manufacturers. Therefore, the establishment of petrol/diesel pumps and distribution of petrol/diesel to the customers amounts to the service industries. Such service industries are covered within the meaning/expression “bonafide industrial purpose”, as per explanation 1 to Section 65B. Accordingly, the retail outlet – petrol/diesel pumps distribute the petrol/diesel to the customers are considered as bonafide industrial purpose and as the same is directly concerned with the requirement of the public at large and their convenience, such activity of distribution of petrol/diesel by retail outlet amounts to service industries. As per the provisions of the Act itself, when there is a matter of storage of the products, it is amounting to the industrial purpose, as such storage of the diesel/petrol is being done in the underground tanks of the retail outlet at initial stage and thereafter the

distribution therefrom is being done through the pumps. Accordingly, the retail outlet petrol pumps are industrial purpose and looking to the object thereof, it amounts to bonafide industrial purpose and further as the distribution activity is concerned with the public facilities at large based on their requirement. Such activity of distribution of petrol/diesel from the retail outlet amounts to service industries also. Such activity of distribution of petrol/diesel from the retail outlet amounts to service industries also.

12.1N The said provision of the Act and the rules makes it clear that if some of the person desires to carry out operation of industrial purpose as envisaged under Sec.48 read with Sec.65 then complete scheme has been provided under the Code and, therefore, the State Government has full power to grant permission in this behalf.

13. It may be noted that we have come to the age of globalisation where the men and the goods have been transported from one place to another,

therefore transport and communication plays very important role. For transporting men or goods, petrol and diesel is very important fuel (raw material) by which transport and communication can go further. So for travelling public required petrol and diesel on the highway or such place which may be necessary in this behalf. Therefore establishment of petrol and diesel retail outlets is not only required but it is necessary. As it is not possible in a widespread network as well the widespread public demand to distribute or provide the product – petrol/diesel directly to the consumers by the manufacturers.

14. Therefore, the establishment of petrol/diesel pumps and distribution of petrol/diesel to the customers amounts to the service industries. Such service industries are covered within the meaning/expression “bonafide industrial purpose”, as per Explanation I to Section 65(B). Accordingly, retail outlets distributing the petrol/diesel to the customers are considered as bonafide industrial purpose and as the same is

directly concerned with the requirement of the public at large and their convenience, such activity of distribution of petrol/diesel by retail outlet amounts to service industries.

14.1 As per the provisions of the Act and the Rules it is amounting to the industrial purpose, as such storage of the diesel/petrol is being done in the underground tanks of the retail outlet at initial stage and thereafter the distribution therefrom is being done through the pumps.

14.1A From the record it appears that what is to be done by respective Collectors area-wise while granting deemed N.A., permission is to verify as to whether such persons have obtained necessary permissions/consent as required under the respective laws. The provisions of “deemed N.A.” permission are not applicable to the area of Urban Development Authority and area for which Town Planning Scheme exists. The reason behind such demarcation is that qua the said both the areas the respective authorities may have classified the areas while

implementing their own rules and regulations and so as to see that there may not be any conflict in the schemes of those local authorities, the said demarcation is provided.

14.2 Tenancy Act:

14.2A The petitioner has made allegation that certain provisions of Tenancy Act have been violated.

14.2B For appreciating the said contention, I first refer to Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “Tenancy Act”), particularly Sec.43 which provides restrictions on transfers of land purchased or sold under this Act. Section 43(1) and Section 43(1A) reads as under:

> “(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 32-O, [32U, 43-ID or 88E] or sold to any person

under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine, and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector].

[(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.]"

[(1C) The land to which sub-section (1) applies and for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 (Bom V of 1879) for use of such land for a bonafide industrial purpose may, notwithstanding anything contained in sub-section (1) of this section, be sold without the previous

sanction of the Collector under sub-section (1) but subject to payment of such amount as may be determined by the State Government under sub-section (1)].

"(2) [Any transfer or partition, or any agreement of transfer, of any land or any interest therein] in contravention of sub-section (1) [or sub-section (1C) shall be invalid]."

14.2C Most of the application for sanction come under this clause. The condition is that sale is being made for bonafide purpose. Once the authority is satisfied there is no reason why sanction should not be followed.

14.2D From the averments it may be noted that the petitioners have made allegations and contended by them that for the purpose of installation of petrol pumps, the agricultural lands are being purchased by the respondent company and is being used for installation of petrol pumps in violation of Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as

"Tenancy Act"). However, in this connection to appreciate their contention, I may rely upon Sec.63AA of the Tenancy Act as Amended by the Gujarat Act No.7 of 1997. The said section provides sale of agricultural land is permitted in certain cases. The said section 63AA of Tenancy Act is reproduced hereunder for ready reference.

> "Sec.63AA Sale of land for bonafide industrial purpose permitted in certain cases:- (1) Nothing in Section 63 shall prohibit the sale or the agreement for the sale of land for which no permission is required under sub-section (1) of Section 65-B of the Bombay Land Revenue Code, 1879 [Bom.V of 1879] in favour of any person for use of such land by such person for a bona fide industrial purpose:
>
> Provided that -
>
> (a) the land is not situated within the urban agglomeration as defined in clause (a) of Section 2 of the Urban Land Ceiling and Regulation Act, 1979 (33 of 1976).

(b) where the area of the land proposed to be sold exceeds ten hectares, the person to whom the land is proposed to be sold in pursuance of this sub-section shall obtain previous permission of the Industries Commissioner, Gujarat State or such other officer, as the State Government may, by an order in writing, authorize in this behalf.

(c) the area of the land proposed to be sold shall not exceed four times the area on which construction for a bonafide industrial purpose is proposed to be made by the purchaser;

Provided that any additional area which may be required for pollution control measure or required under any relevant law for the time being in force and certified as such by the relevant authority under that law shall not be taken into account for the purpose computing four times the area.

(d) Where the land proposed to be solds owned

by a person belonging to the Scheduled Tribe, the sale shall be subject to the provisions of Section 73-AA of the Bombay Land Revenue Code, 1897.

(2) Nothing in Section 63-A shall apply to any sale made in pursuance of sub-section (1)

(3) (a) Where the land is sold to a person in pursuance of sub-section (1) (hereinafter referred to as “the purchase”), he shall within thirty days from the date of the purchase of the land for a bona fide industrial purpose send a notice of such purchase in such form along with such other particulars as may be prescribed, to the Collector and endorse a copy thereof to the Mamlatdar.

(b) Where the purchaser fails to send the notice and other particulars to the Collector under clause (a) within the specified therein, he shall be liable to pay, in addition to the

non-agricultural assessment leviable under this Act, such fine not exceeding two thousand rupees as the Collector may, subject to rules made under this Act, direct.

(c) Where, on receipt to the notice of the date of purchase for the use of land for a bona fide industrial purpose and other particulars sent by the purchaser under clause (a), the Collector, after making such inquiry as he deems fit -

(i) is satisfied that the purchaser of such land has validly purchased the land for a bona fide industrial purpose in conformity with the provisions of sub-section (1) he shall issue a certificate to that effect to the purchaser in such form and within such time as may be prescribed.

(ii) is not so satisfied, he shall, after giving the purchaser an opportunity of being heard, refuse to issue such certificate and on

such refusal, the sale of land to the purchaser shall be deemed to be in contravention of Section 63.

(d) (i) the purchaser aggrieved by the refusal to issue a certificate by the Collector under sub-clause (i) of clause (c) may file an appeal to the State Government or such officer, as it may, by an order in writing, authorize in this behalf.

(ii) the State Government or the authorized officer shall, after giving the appellant an opportunity of being heard, pass such order on the appeal as it or he deems fit.

“(4)(a) The purchaser shall comply with the provisions of any law for the time being in force or any other or direction of the Central Government or State Government or any Corporation owned or controlled by such Government, Government Company, local authority or statutory authority in relation

to use of land for industrial purpose before the land is put to use for such purpose."

(b) The purchaser to whom a certificate is issued under sub-clause (i) of clause © of sub-section (3) shall commence industrial activity on such land within three years from the date of such certificate and commence production of goods or providing of services within five years from such date.

Provided that the period of three years or as the case may be, five years may, on an application made by the purchaser in that behalf, be extended from time to time, by the State Government or such officer, as it may, by an order in writing, authorize in this behalf, in such circumstances as may be prescribed.

(5) Where the Collector after making such inquiry as he deems fit and giving the purchaser an opportunity of being heard, comes

to a conclusion that the purchaser has failed to commence industrial activity or production of goods or providing of services within the specified in clause (b) of sub-section (4), or the period extended under the proviso to that clause, the land shall vest in the State Government free from all encumbrances of payment to the purchaser of such compensation as the Collector may determine, having regard to the price paid by purchaser and such land shall be disposed of by the State Government, having regard to the use of land."

14.2E For appreciating the impact of Sec.63AA, I may usefully refer to the "object and reasons" in interpreting the said section particularly amendment in this behalf. The statement of "object and reasons" of the said Amending Act reads as under:

"In the Acts applicable to the Bombay area and the Kutch area of the State, the tenant is prohibited from selling without the permission of the Collector, the land which he has

purchased under those Acts and in all the three Acts, there is prohibition against the sale of agricultural land by an agriculturist to a non-agriculturist without the permission of the Collector. With a view to encouraging industrialists and entrepreneurs to start industries in the State, it is proposed to amend those Acts with a view to doing away with bar against sale of land by tenant without the permission of the Collector and the bar against the sale of land by an agriculturist to non-agriculturist without taking permission of the Collector so that the land could be used for a bonafide industrial purpose. However, where the total extent of such land proposed to be purchased exceeds ten hectares, the purchaser is required to obtain prior permission of the Industries Commissioner or an officer authorised by the State Government. Under the proposed provisions, the purchaser is required to commence the industrial activity within a period of three years from the date of issue of certificate of valid sale to him by the

Collector and to commence production of goods or providing services within five years from such date or within the extended period, failing which the land shall vest in the State Government on payment of compensation to the purchaser and the Government would be free to dispose it of having regard to the use of land."

14.3 I have made a reference to the statement of "objects and reasons" only for limited purpose for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the amending statute, and the evil which the Amended Act was sought to remedy. I have referred objects and reasons only for limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Amended Act to introduce the same and the extent and urgency of the evil which legislature sought to remedy.

14.3A I have also considered Sec.63AA of the

Bombay Tenancy & Agricultural Lands Act, 1948, as amended by the Gujarat Act No.7 of 1997 along with objects and reasons which is in the Amended Act which provides sale of agricultural land is permitted for bonafide industrial purpose. From the said section it is clear that where the agricultural land is to be used for bonafide industrial purpose, the bar of Section 63 would not apply, subject to the conditions as stipulated in Section 63AA. Thus, the argument of the petitioner that there is a bar of Sec.63 has no substance in this behalf.

14.3B From the said provision it appears that the opinion of the Industries Commissioner under Section 63AA of the Bombay Tenancy and Agricultural Act, 1948 is required only if the land to be procured in question is more than 10 Hectares. So in a given case of retail outlet, the land requirement is less than 10 Hectares, then the opinion of Industries Commissioner is not required. The State Government has after referring to Section 63AA has issued the certificate to the effect that in a given case the

occupant of the land can use the land in question for bonafide industrial purpose and stated that they have complied with the provisions of Sec.63AA of the Act.

14.3C In view of Section 63AA read with part 1 and 2 it becomes clear that when the agricultural land is to be used for industrial purpose or enterprise, it will fall under the expression “bonafide industrial purpose.” Further the service industry would also fall under the expression bonafide industrial purpose. Even as per Section 65B(1)(b)(II) so far as retail outlets are concerned, it would also mean storage of chemical or petrochemical and, therefore, for retail outlets N.A., permission is not required to be obtained if the conditions are satisfied.

14.3D At this stage I may state the State of Maharastra has inserted Sec.63-1A by Maharastra 28 of 1994 w.e.f. 3.2.1994 which provides transfer to non-agriculturist for bonafide industrial use, and from the said amendment both in Maharastra as well as State of Gujarat it appears that the amendment has been newly added permitting transfers to non-

agriculturist for a bonafide industrial use subject to certain conditions. It appears that the new Sec.63-1A introduced by the above Maharashtra amendment would undoubtedly remove the hurdles in the way of those who genuinely need lad for industrial purposes. Time consuming proceedings both under the Tenancy Act as well as under Bombay Land Revenue Code have been removed and a smooth way has been created to purchase lands for a bonafide industrial use on certain conditions. That is the object of legislature and when this Court consider this facts and circumstances of the case, the Court has to consider the said amendment in this behalf.

Definition of Petroleum and Petrochemicals considered.

14.4 I have also considered the definition of petrochemical and petroleum products in this behalf from various dictionaries which has been referred to by the learned counsel for the respondents, following position emerge for that purpose I have relied upon various dictionaries and the meaning of petrol and diesel which has been referred in the

course of hearing which reads as under.

14.5 The petrol (MS) and diesel(HSD) are the chemicals, which are obtained from petroleum and therefore are petrochemicals. There is no sacrosanct definition of petrochemicals. The same is based on various encyclopedia references which are attached herewith, it becomes clear that both petroleum products i.e., petrol (MS), diesel (HSD) are petrochemicals are obtained by processing of petroleum (which is also commonly referred as Crude Oil).

14.6 As per the definition of petroleum provided in the above mentioned Hawley's Dictionary, which says, “petroleum (crude oil). A highly complex mixture paraffinic, cycloparaffinic (naphthenic), and aromatic hydrocarbons, containing low percentages of sulphur and trace amounts nitrogen and oxygen compounds”. This definition of petroleum provides that it is crude oil and a mixture of varieties of hydrocarbons. It also gives its constituents. It is well known that petrol and

diesel are also made up of same constituents and are mixture of hydrocarbons. Thus, petrol and diesel are the chemical compounds of hydrocarbons obtained from petroleum.

14.7 Therefore, petrol (MS) and diesel (HSD) also fall in the definition of the petrochemical mentioned above since their ultimate raw material is petroleum (crude oil). They are also hydrocarbons derived from the petroleum and has paraffins, olefins, naphthene, aromatics as their constituents. The meaning of 'petrochemical' provided in Wikipedia, Encyclopedia widely used and accessible on internet, is “A petrochemical is any chemical derived from fossil fuels. These include purified fossil fuels such as methane, propane, gasoline kerosene, diesel fuel.” It may be seen from this definition that both gasoline and diesel are included as petrochemicals. The gasoline mentioned here represents petrol. Thus, both the above mentioned definitions of petrochemicals, i.e., those referred in Howleys' Dictionary and Wikipedia, are referring to the source of raw

material or original from where petrochemical is derived as the crude oil or petroleum or fossil fuels which are synonyms. Therefore, there is no doubt that the MS and Diesel are derived from crude oil or petroleum from mother earth and are petrochemicals.

14.8 In Encyclopedia Britannica, the words “petrochemical and petroleum” are defined. As per Encyclopedia Britannica, petroleum is “complex mixture of liquid hydrocarbon that is widespread in the Earth. The term is generally synonymous with “crude oil”. The word “petrochemicals” is defined as - “chemicals derived from a starting raw material obtained from petroleum and used for a variety of commercial purposes; they cover the whole range of aliphatic, aromatic, and naphthenic organic chemicals, as well as carbon black and such inorganic materials as sulphur and ammonia.” Thus, it can be seen from this definition also that “petrochemicals” embrace a wide varieties of chemical compounds having hydrocarbons of the range of aliphatic, aromatic, and naphthenic organic

chemicals. The petrol and diesel are also made up of constituents of above mentioned aliphatic, aromatic, and naphthenic organic chemicals quoting Hawley's dictionary as mentioned at “A” above in this para. Thus, petrol and diesel are also petrochemicals.

14.9 From the various definitions given in various books, it appears that the petrol and diesel are made of various hydrocarbons mixture called petrochemical like olefins, paraffins or naphthenes etc. There is no doubt that the petrol and diesel are made of mixture of above mentioned constituents which are called and identified as petrochemicals. In view of the use of these chemicals the products called MS and Diesel as fuels they have come to be popularly known as fuels. However, they are known as chemical by any definition and being the chemicals, derived from petroleum (crude oil), they are petrochemicals. In manufacturing process for petrol, diesel and petrochemicals involve the same source of origin as crude oil (petroleum) obtained from mother earth in both cases of petrochemicals

and MS and Diesel. Both are essentially hydrocarbons. In the manufacturing, from the petroleum, depending upon the use and application, the chemicals are separated out of petroleum. The earlier recovery from petroleum in the history, was that of products which were made use into fuels and therefore came to be popularly known as petrochemicals, but their constituents are same. They are hydrocarbons with the same origin and are working as feedstock to each other. Therefore petrol (MS) and diesel (HSD) are also petrochemicals or chemical compound because their origin is same. Their constituents are same, these are also produced from each other and they are from the same family and produced in the same plants also.

14.10 From the Book Encyclopaedia of Petroleum Laws, Eight Edition on page 21 and 22 the word “petroleum” and “petrochemical” defines as under:

“Petroleum” - Mineral oil, normally a liquid mixture consisting essentially of many different

hydrocarbons, occurring naturally and having a wide range of colour from yellow to black and characteristic odours. It is the raw material form which gasoline, kerosene, lubricating oil, fuel oil, paraffin wax, bitumen and other products are obtained. In modern technical usage the term includes gaseous and solid as well as liquid hydrocarbons."

"Petrochemical" - An intermediate chemical derived from petroleum, hydrocarbon liquid or natural gas e.g., ethylene, propylene, benzene, toluene, and xylene."

14.11 The Petroleum Act, 1934, Sec.2(a) defines petroleum as under:

(a) "petroleum" means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid), viscous or solid) containing any liquid hydrocarbon.

(b) "petroleum Class A" means petroleum having a

flash-point below twenty-three degrees Centigrade.

(bb) “petroleum Class B” means petroleum having a flash-point of twenty-three degrees Centigrade and above but below sixty-five degrees Centigrade.

(bbb) “petroleum Class C” means petroleum having a flash-point of sixty-five degrees Centigrade and above but below ninety-three degrees Centigrade.

14.12 The Petroleum and Natural Gas Rules, 1959, also defines petroleum product which reads as under:

“Petroleum product” means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum casinghead gasoline natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by

products derived from oil or gas, and blends or mixtures of two or more liquids products or by-products derived from oil condensate gas or petroleum hydrocarbons, whether herein enumerated or not."

14.13 It appears that MS & HSD are derived after processing and refining of petroleum. MS & HSD are, therefore, derivatives of petroleum, therefore petrochemicals, a organic compound for which petroleum is the ultimate raw material.

14.14 From the definition and meaning of petrochemical as per Website of Wikipedia, the free encyclopedia, according to which "a petrochemical is any chemical derived from fossil fuel." These include fossil fuels such as methane, propane, butane, gasoline, kerosene, diesel fuel, aviation fuel, or fuel oil, and also include many agricultural chemicals such as pesticides, herbicides and fertilizers and other items such as plastics, asphalt and synthetic fibers and also a wide variety of industrial chemicals are

petrochemicals.

14.15 Thus, in my considered view the Motor Spirit Diesel, Aviation fuel, etc., are included within the meaning of petrochemicals. Therefore, the attempt of the petitioner to misinterpret the word “petrochemical” is not borne out from the record.

14.15A I have also to consider the provisions of Gujarat Town Planning and Urban Development Act, 1976 which provides law relating to the making and execution of development plans and town planning schemes in the State of Gujarat. Section 9 provides development plan. Section 12 provides contents of draft development plan. Sec.13 provides publication of draft development plan. Sec.16 provides submission of draft development plan to the State Government for sanction. Sec.17 provides power of State Government to sanction draft development plan and Sec.118 provides power to make rules in certain situation and pursuant to that the Government has also enacted Gujarat Town Planning and Urban Development Rules, 1979. The provisions of Gujarat Town Planning Act and

Rules will have also to be considered when we consider the provisions of Bombay Land Revenue Code, Tenancy Act along with various communications which has been referred by the authority in this behalf.

14.16 It may be noted that the Ministry of Road, Transport and Highways has issued a G.R., which is called Ribbon Development Rules and the Circulars issued by Food & Civil Supplies Department, Petroleum Department and other Departments provision thereof operate as per the location of the petrol pumps. The concerned authorities under the respective laws are given the powers to verify satisfactions of the requirements stipulated in the respective laws applicable. The norms and the clarification issued from time to time and operating at relevant time are being followed by the respondents department of the State Government.

14.16A Now the petitioners have made prayers regarding various communications issued by the State Government as well as Central Government and challenged those on certain grounds. I, therefore, considered all those documents in this behalf.

14.17 **REGARDING G.R. DATED 17.7.1980.**

14.17A The stipulation which are provided under the Circular dated 17.7.1980 and other circulars and guidelines including IRC guidelines are also looked into the cases wherever it applies considering the location of the outlet petrol/diesel petrol pumps. From the Circular dated 17.7.1980, the R&B Department has to give opinion as and when it is called for from the Revenue Department or any other Department with regard to Ribbon Development Rules, examining as to whether there is a compliance of Ribbon Development Rules or not and other such matters are to be decided on the basis of maps and drawings containing the details. The issues are to be considered in compliance with the provisions of Circular dated 17.7.1980 issued by the Revenue Department.

14.17B The clause 2(1) of the said circular is concerned with the R&B Department and accordingly the respondents has to verify about the distance of the establishment of the petrol pump for all kind of

roads and bye-pass or diversions, except the petrol pump sought to be established on National Highways. The opinion are being issued as per the norms laid down as per the circular dated 17.7.1980 upon examining the documents submitted.

14.17C The norms fixed applies unanimously throughout the State and to all concerned and there is no discrimination in implementing the norms during its operative period.

14.17D In view of the amendment to the Section 65 of the Bombay Land Revenue Code when any agricultural land is to be used for non-agricultural purpose, the permission of the competent authority under the Code was to be required to be taken. While granting such N.A., permission, the Collector concerned is to examine various issues like – what should be the distance between such proposed construction on non-agricultural land and the central point of the road. At the time of submitting an application for non-agricultural use such applicant is required to submit

a copy of the plan approved by the competent authority. The R&B Department has to maintain the distance between the road and proposed construction in this behalf. The Government has conferred a power on the Collector of the Revenue Department to grant the non-agricultural permission in this behalf. In view of the same, the Government in consultation with R&B Department issued various resolutions and circulars in this regard. Accordingly, the respondents authorities are complying with the said provisions while granting N.A., permission and also taking necessary action against all the persons whosoever commits breach of any such provisions and actions are also taken against the private respondents wherever such breach of provisions are noticed by the authorities.

14.17D/i It appears that all the oil companies have complied with the norms suggested by Ministry of Road, Transport and Highways, Government of India G.R., of Revenue Department dated 17.7.1980 (Ribbon Development Rules), circulars issued by Food and

Civil Supplies Department, Government of Gujarat. The Government also obtained necessary opinion from the District Collector and after receiving the same, the Government has issued NOC under Petroleum Rules and therefore necessary licence have been issued as per Petroleum Act and Petroleum Rules.

14.17E The letter dated 31.8.2000 & subsequent letters.

14.17E/i The letter dated 31.8.2000 addressed by Superintending Engineer for Director General (Road Development) & Additional Secretary to Chief Secretaries (PWD/Roads) of all State Governments/UTs dealing with National Highways & Centrally Sponsored Schemes provides systems improvement for installation of petrol/diesel/gas -retail outlets and service stations as well as access to private properties along National Highways. The said letter provides procedure for installation of new Retail Outlets (petrol/diesel/gas) & access to private properties. It also provides procedure for existing petrol/diesel/gas pumps/private properties on

existing National Highways. It also provides procedure for existing Retail Outlets on newly declared National Highways. Along with the said letter there is a stipulated norms for location and layout of petrol/diesel retail outlet and service stations along National Highways and annexures. The said annexure provides general conditions of siting, keeping of frontage, buffer strip, visibility,layout of entrance and exit, drainage, kiosk, lubritorium and other buildings. Documents to be submitted for getting approval for installation of new Retail Private property along National Highways. Documents to be submitted for renewal of licence deed for allowing approach retail outlets/private property etc., along National Highways.

14.17F It appears that Ministry of Petroleum and Natural Gas, New Delhi (Union of India) – respondent No.3, the Ministry had granted authorization to private companies to market transportation fuels namely MS (petrol), HSD (diesel) and Aviation Turbine Fuel (ATR), after taking into account the recommendations of the report “Indian Hydrocarbon

Vision – 2005" vide authorization letter dated 8.3.2002 which is annexed in the petition. For the said authorization, the guidelines are mentioned in the said authorization letter itself. The private companies are authorized to make the aforementioned fuels as per the said guidelines and further amendments made in the said guidelines.

14.17F/1 The Government of India through Ministry of Petroleum & Natural Gas has also published a resolution dated 8th March, 2002. This gazette provides that the Government of India have granted authorization to market transportation fuels namely Motor Spirit (MS) and High Speed Diesel (HSD) to the new entrants. The said gazette provides certain conditions and explanation also in this behalf.

14.17G It appears that the conditions are evaluated on the basis of GR dated 8.3.2002 and letter dated 27.5.2002. Under the said GR, it was pointed out again that there has been no restrictions contemplated as to the location of RO. From the record it appears that all oil companies particularly

respondent No.7 has furnished all the information as to the locations where it wanted to set up RO.

14.17H It further appears that in the environment of Dismantling of Price Mechanism and Grant of Marketing Rights to eligible private oil companies, there is no sanction required from the State Government as far as location and choice of site is concerned. The choice of a given location is fully within the scope of a private oil companies. The petitioner seeks to canvass that locating a RO is in the vicinity of an existing outlet amounts to encroachment and therefore such a view does not find favour either in GR dated 8.3.2002 or letter dated 27.5.2002 and it does not contemplate that there should be fixed location as far as petroleum is concerned.

14.17I It appears that the National Highway Authority which is a statutory authority which now constituted which has to look into the norms to be followed by the petrol company. It appears that the said authority has taken care for the new retail

outlets only after scrutinizing and verifying that the concerned norms are adhered to. It appears that neither the Indian Red Congress (IRC) recommendations nor the norms framed by the Ministry of Road, Transport and Highways prohibits installation of petrol pumps within 300 mtrs., are violated. The authority has provided a service road adjacent to the National Highway, then the pre-condition of 300 mtrs., is not applicable.

14.17J It appears that when service roads are constructed around the highway, then it plays a vital role not only in controlling the traffic since the slow moving vehicles and pedestrians normally use the service road but also helps in giving access to the public amenities provided at different locations, as per the need for the convenience of the road users and such public amenities may include rest rooms, restaurants, petrol pumps etc.

14.17K It appears that all the respondents oil companies have carried out all substantive as well

as procedural formalities so far at the site are concerned which are preliminary activities after NOC from Gram Panchayat. In my considered view it appears that the Executive Engineer has recommended the case for issuance of NOC. The allegation of the petitioner that oil companies had committed various defaults as per provisions of act, rules and regulations is not borne out from the record of the case. It appears that locating a petrol pump in the vicinity of an existing RO is not an encroachment in the light of Govt. of India's G.R., dated 8.3.2002 and letter dated 27.5.2002.

14.18 **Regarding Circular dated 10.2.2003.**

14.18A The Revenue Department, State of Gujarat, had issued the circular dated 10.2.2003 which is rather clarificatory in nature and not supplementary/additional provisions. The said circular is in consonance with Sec.65B of the Code. The retail sale of petrol/diesel at retail station are service industry or amounts to use the land for bonafide industrial purpose. The said circular is made applicable to all without any discrimination and

even the petitioner also may take the benefit thereof subject to the stipulation mentioned in the Act itself. As per circular dated 10.2.2003 anyone who wants to start petrol pump would be granted deemed N.A., permission subject to various terms and conditions while granting such N.A., permission with retrospective effect. As per the said circular the authority has to examine whether necessary permissions and sanctions are obtained from the competent authorities in compliance with the relevant laws applicable for the said purpose. The circular is uniformly applicable to each and every one for whom the provisions of same are applicable.

14.18B As per said circular deemed N.A., permission to petrol/diesel pumps are granted as in the provisions contained under Section 43 and 63 of the Bombay Tenancy and Agriculture Land Act, 1948. As per the provisions contained in Section 43(1)(c) and 63AA of the Bombay Tenancy Act, when permission for use of the land is granted the purchaser of the land is to inform to Collector by giving necessary notice about

such sale/purchase of the land. On receiving the same after collecting necessary premium under Section 43(1)(c) of the Tenancy Act, the authorities are granting necessary permission in compliance with the provisions of the law applicable thereto. Therefore the question of breach of any of this provisions of law or loss of premium to the Government does not arise. The said circular therefore is in consonance with the provisions of this Act also. As per the said circular the Collector while granting deemed N.A., permission area-wise is to verify as to whether such persons have obtained necessary permission/consent as required under the respective laws. Such provisions of deemed N.A., permission are not applicable to the area of Urban Development Authority and area for which town planning scheme exits. The reason behind such demarcation is that qua both the said areas, the respective authorities may have to classify the area while implementing their own rules and regulations so as to avoid any conflict in the scheme of those local authorities. As per this the Collector has to act with regard to verify as to whether the required

permissions under the different laws are obtained or not.

14.19 **Circular dated 25.9.2003/17.10.2003.**

14.19A The Government of India, Ministry of Road Transport and High Ways (pertains to National Highway) (hereinafter referred to as “MoRTH”) issued a circular dated 25.9.2003/17.10.2003 pertains to the norms for access for fuel stations, service stations and rest areas along National Highways and therefore the said circular would not be applicable in case of State Highways. In that regard the State of Gujarat had issued a No Objection Certificate for all the fuel stations in the past in compliance with the provisions contained in the Ribbon Development Rules, 1980. The norms issued by these letters are to assess for fuel station, service and rest areas along with National Highways issued by the Government of India, Ministry of Road Transport and Highways are applicable to the National Highways and not to State roads. The said norms covers most common situations. Any complex situation would have to be dealt with

through traffic experts for an appropriate solution. Para 6 at page 78 states that cases for granting permission for access to new fuel stations, service stations and rest areas along National Highways shall be dealt with in accordance with the norms prescribed in the Appendix-I to the said circular. The Appendix-I to the said circular and subsequent part of said circular is only for the National Highways which have been circulated to the Secretary of the States as the respective State Governments are working as agencies to maintain National Highways. So in this situation wherever need arises, the State Government follows the circular dated 25.9.2003/17.10.2003 issued by the Government of India.

14.20 The annexures to the said letter i.e. 25.9.2003/17.10.2003 which provides norms for location, layout and access to fuel stations along National Highways. In the said clause 4 provides in that para 4.3.2 provides “urban stretches” i.e., plain and rolling terrain as well as hilly and mountain terrain. For any category of roads of

carriage way of 3.5 mtrs and about as also inter-section with roads of carriage with less than 3.5 mtrs., in urban stretches. It appears that the said circular is the same heading and under para 4.3.2 which deals with “urban stretches” it has been clearly brought out under sub-section 1(ii) that in the plain and rolling terrian the inter-section of road of carriage with less than 3.5 mtrs., the distance should be 100 mtrs., between two fuels stations. Further Ministry of Road, Transport and Highways guidelines permit installation of new fuel station within 200 mtrs., of existing fuel station, provided a common service road is constructed and maintained. I have already referred paras 4.4.3 and 4.4.4 which is on page 83 of the petition which reads as under:

> “4.4.3 If two or more fuel stations are to be sited in close proximity for some reasons, these would be grouped together to have a common access through a service road 7.0 in width and connected to the highway through acceleration, deceleration lanes. From these considerations,

the permission for the new fuel stations would be considered only if it is either in proximity to the existing one so that the common access can be provided or the new one located at the distance of more than 1000 m.

4.4.4 For installation of new fuel station within the 1000, distance of existing fuel station/plain/rolling terrain and 300, in hilly/mountains terrian and urban stretch, new entrant would be responsible for construction and maintenance of the common service road, deceleration and acceleration lanes, drainage and traffic control devises. In case of hilly/mountainous terrain, common service roads at all such locations may not be possible as per the site conditions and therefore common access through service roads would not be a pre-condition."

14.21 Even the IRC recommendations permit the clustering of petrol pumps i.e., construction of retail outlet/petrol pump within 300 mtrs., of an

existing petrol pump as per clause 4.2 which is reproduced hereunder.

> “4.2 Clustering of fuel filling stations along the highway should be avoided and successive fuel filling stations should be located sufficiently apart, as indicated in paragraphs 4.1. If for some reason two or more fuel filling stations are sited in close proximity, these should be grouped together and a parallel service road provided by way of common access. The service road should be of adequate width and at least two-lane side.”

14.21B From the resolution dated 8.3.2003 it makes clear that encroachment on existing retail outlet means that the new entrants shall not operate through a dealer with whom marketing company has entered into agreement or from the existing retail outlet of another company.

14.21C Letter regarding 12.3.2004.

14.21C/i The State Government has issued the aforesaid letter taking into consideration the

letter of Government dated 27.11.2002 along with letter dated 8.3.2002 and fixed certain guidelines in connection with installation and construction of petrol pump.

14.22 Circular of 17.12.2004.

14.22A It appears that the letter at Annexure “H” (i.e. Letter of 17.12.2004 addressed by State of Gujarat to Collector, Mehsana on page 128) is a clarification of the Circular dated 12.5.2004. It appears that the various oil companies have been furnishing such lists to the Food & Civil Supplies Department as per their planning for locations of retail outlets. It appears that the Government of India did not intend to lay down any guidelines which would restrict the freedom of even the private oil companies to chose location of its retail outlets, and has in fact declared its policy to allow the authorized private companies to have freedom in setting up new outlets as per their commercial wisdom as would be appreciated from the authorization letters issued in favour of the various oil companies.

14.23 I have also considered the facts and circumstances of the case and from the record it appears that the State Government circular dated 12.3.2004 at Annexure “G” to the petition which was at page 122 was inconsistent with the conditions of authorization granted by Central Government of India i.e., G.R.dated 8.3.2002 Annexure “F” at page 117 and, therefore, another circular was issued by the State Government clarifying certain aspects on 17.12.2004 which is at page 128 Annexure “H”.

14.23A From the circular dated 12.3.2004 and letter dated 17.12.2004 it appears that the aforesaid circulars are issued by the authority wherein the provision contained in the letter dated 22.11.2002 and resolution dated 8.3.2002 at page 117 issued by the Petroleum and Natural Gas Department of Government of India is taken into consideration.

14.23B In view of the same, the Union of India as well as State Government have decided to encourage investment in refining sector. Therefore it was

decided to grant authorisation to market transportation fuels to new entrants including private sector by setting up mechanism to enable new entrants to establish own distribution network. From the resolution dated 8.3.2003 it makes clear that encroachment on existing retail outlet means that the new entrants shall not operate through a dealer with whom marketing company has entered into agreement or from the existing retail outlet of another company.

14.23C In the letter dated 17.12.2004 it is very clearly pointed out that the instructions issued in the G.R., dated 12.5.2004 and 8.3.2002 are to be followed. The G.R., dated 12.5.2004 and order dated 17.12.2004 are subsequent to circular dated 12.3.2004. From the aforesaid correspondence it is clear that the contents of said letter is not contrary to and inconsistent with the provision contained in circular dated 12.3.2004. The circulars are issued to fix the norms from time to time looking the exigency of circumstances as a matter of policy and the provisions of same are complied with by the

concerned department. As per clause 2 of Circular dated 12.2.2004 a dealer has to obtain a licence to run the business and no one is exempted except company operated and company owned pump.

14.23D It appears that all the oil companies particularly the respondent No.7 has not committed at all any breach of the clause of GR dated 8.3.2002 which provides for exercise of authorization to market transportation of fuel. It appears that the letter dated 17.12.2004 Annexure “H” to the petition although addressed to the Collector, Mehsana, only correctly interprets the circular dated 12.3.2004 and it is a letter of instructions and does carry necessary force of law. It was further observed that in the said letter the Food & Civil Supplies Department has referred to the Govt. of India GR dated 8.3.2002 also and copy of that has been sent to the Collector, Mehsana. It appears that it is an instruction given on the basis of the Govt. of India GR dated 8.3.2002 and it would reveal that the said action was not with a view to favour any of the oil companies particularly respondent No.7 as alleged by

the petitioner.

14.23E Accordingly, the petrol pumps established by company itself are exempted from taking licence whereas the dealers are required to obtain the licence. Licences are required to be obtained by such dealers as per the provisions of the Gujarat Essential Article (Licensing, Control and Stock Declaration Order) 1981. The clause 2(5) thereof is defines who is a “dealer”. Provision regarding licensing of dealers and producer are contained in clause 3. As and when any such application is received by the authority of the Food, Civil Supplies and Consumer Affairs Department along with the necessary certificates and permissions etc., upon verification of such documents, the record thereof along with the application for licence is being placed before the competent authority. Therefore, neither the aforesaid letter nor the circular issued by the Food Civil Supply and Consumer Affairs Department is illegal and without authority as contended by the petitioner.

15. Findings regarding IRC recommendation.

15.1 In this regard it is pertinent to note that the Ministry of Road, Transport and Highways (MoRTH), Govt. of India has indicated on its guidelines and norms to be followed for setting up of the retail outlet alongside the National Highways. There is no confusion as far as National Highways are considered that the IRC norms are not applicable and only norms applicable is the one circulated by the MoRTH vide its letter dated 25.9.2003/17.10.2003. It may be noted that on National Highways the retail outlets are allowed to be set up within 300 mtrs., and 1000 mtrs., distances, as the case may be, with the provision of the service road.

15.2 As regards present case is concerned, it appears that while it is amply clear and mentioned in the MORTH Circular dated 25.9.2003 that the MORTH norms now finalised are in substantial modification over the IRC norms, it appears that it is implied in the judgment that IRC norms as well

as MORTH norms have been called upon to be followed by simultaneously. It appears that the legislature has not envisaged that both MORTH norms and IRC norms are to be observed simultaneously with the various circular, it does not envisage any such situation which petitioner contend in this behalf.

15.3 It appears that IRC norms are made applicable in the State and further stated that there is no directive or circular of the State Government which makes the IRC as a whole applicable nor in particular the 300 mtrs., distance between two retail outlet is made applicable.

15.4 In my considered opinion the IRC norms are recommendatory in nature and they are not statutory norms. The petitioners have failed to show as to how IRC norms are statutory.

15.5 It appears that the IRC norms 12 of 1983 (Annexure ”A” to the petition) have been accepted by the State Government in parts. The resolution

refers to IRC's norms only so far as it relates to layout and internal construction of a retail outlet. The said circular does not lay down any norms for maintaining inter-retail outlet distance, as sought to be contended by the petitioners.

16. As regards Nagalpur site, it is stated that necessary NOC from Gram Panchayat has been obtained and thereafter only preliminary work has been started. It appears that the service road is under construction and for construction NOC from the District Magistrate is not necessary under Petroleum Rules 2002. It appears that licence to store petroleum on tank or tanks in connection with pump outfit for fuel motor conveyances has to be obtained from CCOE. Under Rule 124 of Petroleum Rules, 2002 construction of tank has to be carried out and under Rule 130 certificate has to be furnished by the competent authority to the licensing authority. Thus, construction of tanks for storage is a preliminary stage and it has to be followed by inspection as to safety and issuance of licence.

17. I have considered the judgment of the Apex Court in the case of Narendra Kumar Vs. Union of India (supra) and it appears that the present petition is for enforcement of non-statutory guidelines viz., guidelines recommended by IRC, etc., is not maintainable. The petitioners have failed to show that such guidelines are framed under any Act of the legislature or that they are statutory norms. If there is no statutory norms, the petition under Article 226 of the Constitution of India particularly for writ of mandamus for its enforcement is not maintainable in view of the judgment of the Hon'ble Supreme Court in Narendra Kumar's case (supra).

18. It appears that the various oil companies have not committed any `encroachments' on existing outlets in this behalf as alleged by the petitioner and the said word “encroachment” has no relevance to any trading areas because there is no zonal demarcation made for the retail outlets and the locations of the retail outlet would depend

upon the commercial consideration and viability in setting up the retail outlets in the wisdom of the authorized private company. Thus, the contention regarding alleged encroachment sought to be advanced by the petitioners is absolutely baseless and devoid of any merits, therefore the same has no substance and therefore the contention is rejected.

19. The applicability of different jurisdiction of norms or guidelines on relevant roads is not spelt out. Like MORTH is applicable only for National Highways. But in the case pertaining to national highways, the distance between two Ros are a function of various parameters. Depending upon the stretch of the road whether urban or rural, type of carriage way like undivided or divided, or the road is passing through the hilly terrain etc., the inter RO distance is specified. There is no universal distance like 1 KM specified between two Ros. Moreover there is remedial measure provided that subject to provision of service road, RO within those specified distance can be provided.

20. It appears that clustering of RO should be avoided and minimum distance should be 300 mtrs., is observed from IRC recommended practice (year 1982). It is further highlighted in verbatim from the IRC-82 paras 2,3 and 4.1. Moreover, in MORTH norms of year 2003, it is clearly mentioned that clustering should be provided where necessary within the specified distances. MORTH circular has the administrative authority because it is issued from the Ministry of Government of India and naturally it has a overriding authority over IRC norms which are more in nature of recommendation/guidelines and much older publication of 1982.

21. While observing that the minimum distance should be 1 KM etc., it is not taken into consideration that the specific norms are relevant for rural stretch with certain type of roads like having divided carriageway. It is not that 1 KM distance is to be maintained for all the categories of road falling within rural and urban

stretch or having divided carriage way or not. Moreover, if the RO falls within the specified distance along the road from the other RO located in the vicinity, then there is a remedy provided that subject to the service road construction, and with common access to these clustering of Ros, the new RO is permissible within the specified distances.

22. From the letter of Secretary- MORTH it provides that only after the NOC from the MORTH, the construction should carried out. Moreover the observation in the final para of the order that NOC of the licensing authority is sine qua non before starting construction of the petrol pump. In other words, its application is made out to be globally applicable to all the ROs irrespective of jurisdiction of the roads where it is applicable or not.

23. I have considered the contention of the petitioner particularly decision of the Rajasthan High Court in this behalf. I have also considered

the judgment of the Apex Court in the case of G.J.Fernadez Vs. The State of Mysore (supra) as well as Kumari Regina (supra). In my view, from the affidavit of the State Government and the affidavits of various oil companies which have been filed for which I have already made reference in the judgment, the relief granted by the Rajasthan High Court cannot be granted in view of the same. When this Court is of the view that from the affidavit of the State Government and the affidavit of various oil companies, there is no violation of any breach or regulation and the guidelines in this behalf.

24. The Rajasthan High Court also referred to the judgment of the Division Bench of the High Court in which directions have been issued that establishment and installation of petrol pumps shall not be in violation of policy of Government of India dated 25.9.2004 and 17.10.2003 and any other policy issued by the Government of India. It reiterated that No Objection Certificate by the licensing authority is sine qua non for starting

construction of the petrol pump. Thus, the principle laid down is that while setting up the petrol pumps, the government policy, rules, regulations and guidelines issued by the Central Government, State Government and local authorities should be strictly complied with and the authorities granting permission, license, approval etc., should also grant such permission, approval etc., in strict compliance with all these policies, guidelines, rules and regulations etc.

25. While considering the order of Rajasthan High Court, I may also consider the judgment of Hon'ble Supreme Court which also laid down certain principles in this behalf. It appears that various circulars and guidelines relied on by the petitioner are in the nature of administrative guidelines issued by the Government. The same have no statutory force. It is well settled that they are not enforceable at law and if there is a violation, the petitioner cannot ask for a writ of mandamus in this behalf. For that purpose, I crave leave to rely upon the judgment of the

Hon'ble Supreme Court in the case of G.J.Fernadez Vs. The State of Mysore and others reported in AIR 1967 SC 1753. I also rely upon another judgment of Hon'ble Apex Court in the case of Kumari Regina Vs. St.Aloysius Higher Elementary School and another reported in AIR 1971 SC 1920, particularly para 13, 14 which reads as under.

> “The enforcement of Part II rules for recognition and aid to private schools is a matter between the Government and the management, and a third party, such as a teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of a breach or non-compliance of any of the rules. Thus, when in appeal under rule Department passes order setting aside management's order reducing rank of Head Mistress to Asstt. Teacher, such order is not enforceable in Court of law. (Paras 13, 14).”

26. In view of the above mentioned Hon'ble Supreme

Court judgment, the petitioner is not entitled to any relief in this behalf. Over and above I have considered the judgments of the Hon'ble Apex Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others (supra), Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. (supra), L.Manikchand Proprietor (supra), M/s.Andhra Industrial Works (supra), K.M.Shanmugam (supra), Ramana Dayaram Shetty (supra), the Samarth Transport Co. (supra) and State of Gujarat Vs. Mangal Traders (supra).

27. From all these correspondence and all these judgments and the documents produced by the authority, it appears that there is no substance in the contention raised by the petitioner that the oil companies have violated the provisions of the Bombay Land Revenue Code, Tenancy Act, various Act, Rules and Regulations in this behalf, therefore there is no question of issuance of such direction as prayed for by the petitioner.

28. In view of the aforesaid discussion and I have

referred the provisions of the Bombay Land Revenue Code, Tenancy Act, Ribbon Development Rules, Bombay Land Revenue Rules and from all these provisions, I give direction to both the Union of India as well as State Government that whenever the oil companies make any application in future for construction of petrol pump, they will examine and come to conclusion that all provisions of Bombay Land Revenue Code, Tenancy Act, provisions of Bombay Land Revenue Rules, Ribbon Development Rules and other relevant rules have been complied with. If they are complied with then the authority will give necessary permission to construct the petrol pump in this behalf.

28A. The respondents have stated that they have to supply petrol and diesel to various consumers who are using the same and there is a great change in the set up of Nation as well as economy. In view of the same, the change in economy policies of the Nation there are drastic change in various provisions of various Acts under which control and licensing were provided to enable the Union

Government as well as State Government to have flexibility in framing its industrial policies to enable the fast economic development and economic growth. With the redical change in the economic policies of the country, when there are sufficient provisions for flexibility in framing policies exists in the statutes itself the provisions contained in any norms or recommendation cannot be construed as mandatory. The various provisions of law including Bombay Land Revenue Code, Bombay Tenancy Act, Ribbon Development Rules and other letters and circulars which are issued from time to time the only aim is that economic policy of the Nation, they desire to achieve faster economic and industrial development of the country. These are to be considered in the present liberal global economic scenario.

29. In view of the aforesaid facts and circumstances of the case, the present petition which has been filed by the petitioner raising various contentions in this behalf is absolutely

misconceived and unfounded and this Court do not see any reason to interfere with the action taken by the State Government as well as Union Government which has been stated that the main object of having economic development and economic growth particularly under Article 226 of the Constitution of India. The object of the Government regarding economic development and economic growth is a decision of the State Government which are considered to be a policy decision and under Articles 226 and 227 of the Constitution of India, this Court has a very limited jurisdiction in this behalf.

30. The respondents particularly oil companies have contended that the petitioners are also running and carrying business of petrol pumps and this petition has been filed malafidely only to prevent the oil companies to install and construct and open of petrol pump in their own area. The petitioner desires to stall the competition which may be created in future and therefore the action

of the petitioner is not only malafide but also clearly an abuse of process of law. The respondents have made an averments and also cited some of the authorities in the written submissions. However, in view of other submissions which I have considered in this behalf, I have not dealt with this contention of the respondents oil companies.

31. In view of the aforesaid averments made by the respondents in their affidavits and the contentions raised therein, it appears that the grievances of the petitioner that the concerned authority has not followed the law is not borne out from the facts of the case. In view of the same, if the following directions are given the same will be in the interest of justice.

(i) I have considered the submissions of the learned advocate for the petitioner who has made very forceful submission in this behalf. However, in view of the reply filed by the State

Government, Union Government and various provisions of the Act and the Rules which I have discussed earlier, in my view, I do not see any substance in the contention raised by the petitioner. It may be noted that even the petition was filed this Court issued only notice on 5.5.2005 and no interim relief was granted during the pendency of the petition. As now I finally disposed of the matter, there is no question of any relief to be granted to the petitioner in this behalf. However, with a view to see that the equities are maintained and balance is struck so the petition is disposed of with following directions are given to the authority the same will meet the ends of justice.

(ii) This Court direct the respondent Government i.e. State of Gujarat and their officers working in the R&B Department, Revenue Department and other department to enforce the amended provisions of Bombay Land Revenue Code, Tenancy Act and also Gujarat Town Planning Urban Development Act and the

Rules in this behalf so far as installation and starting of petrol pump is concerned.

(iii) The Union of India as well as State of Gujarat will keep in mind the norms laid down in the letters dated 25.9.2003/17.10.2003 in light of the amendment in the Act and the Rules and the discussions which this Court has done in the judgment in connection with construction and installation of the retail outlets of petrol pumps on the Highways and other places as discussed in the judgment.

(iv) In view of the aforesaid discussion, this Court direct the State of Gujarat that while granting permission to various respondents oil companies particularly for construction and installation of retail outlets, they will have to comply with the provisions of amended Act and Rules in this behalf as discussed by this Court.

(v) The State of Gujarat and other authorities while

granting permission of petrol pump may also consider the resolution issued by the Union of India dated 8.3.2002 and also the norms laid down by the State Government dated 12.3.2004 as well as communication dated 17.12.2004 in light of the amended provisions of the Bombay Land Revenue Code, Bombay Tenancy Act and the Rules and other discussions which I have made in the judgment.

32. In view of the aforesaid observations and directions, the petition is accordingly disposed of. Rule is discharged to the aforesaid extent with no order as to costs.

ORDER IN SCA Nos.8117 of 2005 & 8118 of 2005.

33. Though all the three matters are heard together, as far as main judgment is concerned, I have considered the facts of Special Civil Application No.8116 of 2005 and I have given detailed reasons and disposed of the said matter. The other two matters i.e. Special Civil Application Nos.8117 & 8118 of 2005 are also identical and

raising same challenge. In view of the reasonings and conclusion in the main judgment, these two petitions i.e. Special Civil Application No.8117 of 2005 and 8118 of 2005 are also disposed of accordingly. Rule is discharged to the aforesaid extent in both the petition with no order as to costs.

(K.M. Mehta, J.)

syed/